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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 520

LEWIS-SIMAS-JONES COMPANY, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST APPELLATE DISTRICT, STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED OCTOBER 21, 1930

CERTIORARI GRANTED DECEMBER 1, 1930

(35,442)

(35,442)

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST APPELLATE DISTRICT, STATE OF CALIFORNIA

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[fol. 1] [Caption omitted]

[fol. 2]

IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. NO. 4

No. 172,283

LEWIS-SIMAS-JONES CO., Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, Defendant

COMPLAINT FOR DAMAGES—Filed Aug. 11, 1926

The plaintiff complains of the defendant herein and for cause of action alleges:

I

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California.

II

That defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Kentucky and doing business in the State of California. That said defendant is a common carrier by railroad for hire in interstate commerce.

[fol. 3]

III

That the defendant, in the year 1923, delivered to plaintiff at San Francisco, California, three carloads of Cow Peas which the said defendant, in conjunction with the Southern Pacific Railroad Company of Mexico, had theretofore transported under a through bill of lading and joint through rate from Navojoa, Sonora, Mexico. That said defendant collected from plaintiff at San Francisco, California, for the said transportation, the sum of $3,828.74 which said transportation charges were based upon weight of 287,875 lbs. and joint through rate of $1.33 per 100 lbs.,

which said joint through rate was named in a tariff duly published and filed with the Interstate Commerce Commission by the said defendant and the Southern Pacific Railroad Company of Mexico, to wit, Pacific Freight Bureau Tariff 20-D, I. C. C. 594, of F. W. Gomph, Agent.

IV

That the said joint through rate of $1.33 per 100 lbs. from Navojoa, Sonora, Mexico, to San Francisco, California, was unjust and unreasonable to the extent that it exceeded 94¢ per 100 lbs.

V

That on September 18, 1925, the Interstate Commerce Commission duly made and entered its order directing [fols. 4 & 5] said defendant to pay to the said plaintiff on or before November 23, 1925, the sum of $1,122.72, with interest thereon at the rate of six per cent per annum from January 21, 1924, as reparation on account of the collection of the aforesaid unreasonable rate. That a true and correct copy of the said order is attached hereto marked "Exhibit A."

VI

That no part of said sum of $112-.72 or interest thereon has been paid and the whole thereof is now due, owing and unpaid by the said defendant to the said plaintiff.

Wherefore plaintiff prays judgment against the defendant in the sum of $1246.32 with interest thereon from November 23, 1925; for reasonable attorney fees and cost of suit.

E. W. Hollingsworth, Attorney for Plaintiff.

Duly sworn to by F. J. Jones. Jurat omitted in printing.

[fol. 6] EXHIBIT A TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 16183

LEWIS-SIMAS-JONES COMPANY

v.

SOUTHERN PACIFIC COMPANY

Submitted June 12, 1925. Decided September 18, 1925

Rate charged on cow-peas, in carloads, from Navajoa, Sonora, Mexico, to San Francisco, Calif., in 1923, found unreasonable. Reparation awarded.

E. W. Hollingsworth and Bishop & Bahler for complainant.

James R. Bell, G. H. Muckley, Elmer Westlake, F. W. Mielke and James E. Lyons for defendant.

Report of the Commission

Division 4, Commissioners Meyer, Eastman, and Woodlock

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation and has its principal place of business in San Francisco, Calif. By complaint filed [fol. 7] July 31, 1924, it is alleged that the rate charged for the transportation of 3 carloads of cow-peas which moved from Navojoa, Sonora, Mexico, to San Francisco, during November, 1923, was unreasonable. Reparation only is asked. Rates will be stated in amounts per 100 pounds.

The shipments aggregated 287,875 pounds and averaged 95,958 pounds per car. Charges were collected at the rate of $1.33, minimum 40,000 pounds per car. At the time the shipments moved there was a rate of 94 cents applicable on peas, Mexican (Garbanzo) minimum 60,000

pounds per car, and this rate was made applicable on cow-peas April 19, 1924, and is now in effect.

The shipments moved over the Southern Pacific Railroad Company of Mexico, the West Coast Route, 377 miles to Nogales, Ariz., and defendant's line 1,036 miles to destination, total distance 1,413 miles. The rate charged yielded earnings which averaged 90 cents per car-mile, and 18.8 mills per ton mile. The present rate would have yielded on these shipments in excess of 63 cents per car mile and 13.3 mills per ton mile, and nearly 40 cents per car-mile at the minimum weight now applicable.

Defendant moves to dismiss the complaint, alleging that we lack jurisdiction over joint rates from points in an [fol. 8] adjacent foreign country to points in the United States. The motion is denied. International Nickle Co. v. Director General, 66 I. C. C. 627.

At the time the shipments moved defendant concurred in a rate of 94 cents, minimum carload 60,000 pounds, on garbanzos between the points here in issue. Garbanzos, or chick-peas, and black-eyed beans, or cow-peas, are both used for human and for animal consumption; and such physical differences and differences in value as may exist between them would tend to favor cow-peas. Although defendants have made some showing of difficult transportation conditions in Mexico and that the rates on both garbanzos and cow-peas were influenced by water competition, other comparisons of record support complainants' contention. There was no real justification for a higher rate on cow-peas in 1923 than was maintained on garbanzos; for whatever inducement there was for the establishment of the rate on garbanzos that rate should, at the same time, have been extended to cover cow-peas.

We find that the rate of $1.33 per 100 charged, in 1923, for the transportation of 3 carloads of cow-peas from Navajoa, Sonora, Mexico, to San Francisco, Calif., was unreasonable and unjust to the extent that it exceeded 94 [fol. 9] cents per 100 pounds; that the shipments moved as described; and that at destination complainant paid and bore the charges thereon and was damaged thereby. We also find that the defendant, the Southern Pacific Company, in so far as it participated in the transportation and rates in issue was a tort feasor and that it should

make reparation for the damage to complainant in the sum of $1,122.72, with interest.

Order

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 4, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 18TH DAY OF SEPTEMBER, A. D. 1925

No. 16,183

LEWIS-SIMAS-JONES COMPANY

v.

SOUTHERN PACIFIC COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, that the above named defendant be, and it is is hereby authorized and directed to pay unto complain- [fol. 10] ant, Lewis-Simas-Jones Company, on or before November 23, 1925, the sum of $1,122.72, with interest thereon at the rate of 6 per cent per annum from January 1, 1924, as reparation on account of an unreasonable rate exacted for the transportation of 3 carloads of cow-peas from Navojoa, Sonora, Mexico, to San Francisco, Calif.

By the Commission, division 4.

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER TO COMPLAINT—Filed Sept. 17, 1926

Now comes the defendant in the above entitled action and demurs to the complaint on file therein, and as grounds therefor specifies as follows, to wit:

I

That the complaint does not state facts sufficient to constitute a cause of action.

[fol. 11] II

That the court has no jurisdiction of the subject of the action.

III

That it appears from the face of the complaint that the Interstate Commerce Commission had no jurisdiction to order this defendant to pay any reparation on the ground of unreasonableness of a joint through rate assessed and collected on shipments originating in the Republic of Mexico and destined to a point in the United States, and transported under a through bill of lading and upon a joint through rate.

Wherefore defendant prays that plaintiff take nothing by its complaint herein and that defendant have judgment for its costs.

F. W. Mielke, A. L. Whittle, James E. Lyons, Attorneys for Defendant.

I hereby certify that I am one of the attorneys for the defendant in the above entitled case and that I have read the foregoing demurrer and know the contents thereof; that in my opinion the same is well taken in point of law and is not interposed for the purpose of delay.

James E. Lyons.

[fol. 12] (Endorsed:) Service of the within demurrer is admitted this 16th day of September, 1926. E. W. Hollingsworth, Attorney for Plaintiff.

[File endorsement omitted.]

In Superior Court of City and County of San Francisco

Answer to Complaint—Filed Jan. 3, 1927

Now comes the above named defendant and, without waiving its demurrer to the complaint on file in the above

entitled action, for answer to the complaint admits, denies and alleges as follows, to wit:

I

Admits the allegations of paragraphs I, II and III of said complaint.

Defendant alleges that the Southern Pacific Railroad Company of Mexico (Ferrocarril Sud-Pacifico de Mexico), referred to in said paragraph III, is a corporation organized and existing under laws of the State of New Jersey, and operates a line of railroad exclusively within the Republic of Mexico and not otherwise. Avers that said [fol. 13] Southern Pacific Railroad Company of Mexico is, therefore, not subject to the jurisdiction of the Interstate Commerce Commission.

II

Defendant further avers that on or about the 3rd day of November, 1923, at Navojoa, State of Sonora, Republic of Mexico, said Southern Pacific Railroad Company of Mexico received from one A. Von Borstel, (subject to the classification, Mexican tariff, Mexican laws and railway regulations hereinafter mentioned) 1,000 sacks of Cow Peas loaded in car S. P. No. 23993 consigned to Lewis-Simas-Jones Co., San Francisco, California, U. S. A., and thereupon issued an Export Bill of Lading (Conocimiento de Exportacion), a copy of which, together with a true and correct translation thereof from Spanish into the English language, is hereto annexed and marked exhibits "A" and "B" respectively, and hereby made a part of this answer.

Defendant avers that on the 13th day of November, 1923, at Navojoa, State of Sonora, Republic of Mexico, the said Southern Pacific Railroad Company of Mexico received from one Agustin Von Borstel, (subject to the classification, Mexican tariff, Mexican laws and railway regula- [fol. 14] tions hereinafter mentioned) 985 sacks of Cow Peas loaded in car G. H. & S. A. 36042 and consigned to Lewis-Simas-Jones Company, New Orleans, State of Louisiana, U. S. A., and issued therefor its Export Bill of Lading (Conocimiento de Exportacion), a copy of which, together with a true and correct translation thereof from the Spanish into the English language, is hereto annexed and marked exhibits "C" and "D" respectively.

Defendant avers that on the 24th day of November, 1923, at Navojoa, State of Sonora, Republic of Mexico, said Southern Pacific Railroad Company of Mexico received from Agencia Comercial del Mayo, (subject to the classification, Mexican tariff, Mexican laws and railway regulations hereinafter mentioned) 840 sacks of Cow Peas loaded in car S. P. 84996, consigned to Lewis-Simas-Jones Company (Gibraltar Warehouse), at San Francisco, State of California, U. S. A., and issued therefor its export Bill of Lading (Conocimiento de Exportacion), a true copy of which, together with a true and correct translation thereof from the Spanish into the English language, is annexed hereto and marked exhibits "E" and "F" respectively, and hereby made a part of this answer.

Said defendant further avers that the contents of said car G. H. & S. A. 36042, were transferred at Nogales, [fol. 15] Arizona, to S. P. 67458 and, on or about November 19, 1923, was, upon order of the plaintiff herein, diverted to the same consignee at San Francisco, California. That said three carloads of Cow Peas are the same three carloads mentioned in paragraph III of the complaint and in the report of the Interstate Commerce Commission in its Docket No. 16183, reported 102 I. C. C. Reports, page 245.

III

Said defendant further avers that at all times herein mentioned, the said Southern Pacific Railroad Company of Mexico, pursuant to the laws and railway regulations of the Republic of Mexico, duly published and filed with the Department of Communications and Public Works of the Republic of Mexico, a freight tariff naming a joint through rate on Cow Peas, carloads, from Navojoa, State of Sonora, Republic of Mexico, to San Francisco, State of California, U. S. A., of $1.33 per 100 pounds United States currency.

Said defendant further avers that at all times herein mentioned, and under and by virtue of the laws and railway regulations of the Republic of Mexico, said Southern Pacific Railroad Company of Mexico was forbidden, under severe penalties, from refunding any portion of its pub- [fol. 16] lished tariff rates without the previous consent of the Department of Communications and Public Works of

the Republic of Mexico. Defendant avers that said Department of Communications and Public Works has not consented to or authorized a departure from the lawful tariff rates on any of the shipments above mentioned, nor has said department consented to the refund of any part of the freight charges mentioned in the complaint herein.

IV

Said defendant further avers that under and by virtue of its divisional agreement with the Southern Pacific Railroad Company of Mexico, and prior to July 31, 1924, this defendant paid to said Southern Pacific Railroad Company of Mexico 63.175 cents per 100 pounds as its proportion of said through rate, leaving this defendant the sum of 69.825 cents per 100 pounds as its proportion of the through rate.

V

Defendant avers that the order of the Interstate Commerce Commission referred to in paragraph V of said complaint is unjust, unreasonable, inequitable and contrary to law, in that it purports to require this defendant to refund to the plaintiff the difference between the lawful [fol. 17] joint through rate charged, to wit: $1.33 per 100 pounds and an unpublished joint through rate of 94 cents per 100 pounds subsequently purported to have been found reasonable by the Interstate Commerce Commission from Navojoa, State of Sonora, Republic of Mexico, to San Francisco, State of California, United States of America. Defendant further avers that said order of the Interstate Commerce Commission is nugatory and void for want of jurisdiction of the subject matter by said Commission; and if enforced by judgment of this court, will take the property of this defendant without due process of law, in violation of the provisions of Section 13 of Article I of the Constitution of the State of California, and the Fifth and Fourteenth Amendments to the Constitution of the United States.

VI

Answering paragraph VI of said complaint, this defendant admits that no part of the sum of $1,122.72, or any

interest thereon has been paid, but denies that the whole or any part thereof is now due or owing by defendant to the plaintiff.

Second Defense

For a further and separate answer, defendant avers that the court has no jurisdiction of the subject matter of the [fols. 18 & 19] action in that it appears from the face of the complaint that the Interstate Commerce Commission had no jurisdiction to order this defendant to pay any reparation or damages on the ground of the purported unreasonableness of a lawful joint through rate assessed and collected on shipments originating on a connecting line of railroad in the Republic of Mexico, destined to a point in the United States, and transported on a through Bill of Lading.

Wherefore defendant prays that plaintiff take nothing by its complaint herein, and that defendant have judgment for its costs.

F. W. Mielke, Albert L. Whittle, James E. Lyons, Attorneys for Defendant, Southern Pacific Building, 65 Market Street, San Francisco, California.

Duly sworn to by G. L. King. Jurat omitted in printing.

(Here follows Exhibit "A" to Answer, side folios 19-a and 19-b)

EXHIBIT "A" TO ANSWER - Page 1.

Forma 10060 (Revisada)

FERROCARRIL SUD-PACIFICO DE MEXICO.

RUTA DE LA COSTA OCCIDENTAL

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Navojoa
Nov 3- 1923

SELLO DE LA ESTACION

Núm. del Remitente ..... Núm. del Agente .....

RECIBIDO el dia 2 de Noviembre de 1923 con sujecion a la clasificación y tarifas en vigor en la fecha de la expedición de este conocimiento.

En la Estación Navojoa Son de A. Von Borstel

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorándose el estado del contenido en los bultos; marcada, consignada y destinada según se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que éste estuviere situado en la linea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto a las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Co.

Destino San Francisco Cal (Gibraltar Wesco) Estado de California EUA

Vía SP Co. Inicial y Núm. del carro SP 23993

Imp. Arrendaño, S. A. 1925

Núms. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Pesos sujetos a corrección
L.S.J.	1000	Sacos	Cow Peas (Frijol Ojo Negro)		50.500 Ks
			S L & C.		
			C/o Manuel F. Gonzalez		
			Nogales Son.		

Clase	Kilogramos		Cuota por 1.000 kilogramos	Cantidad	
D-1					
1½-1					
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
EXTRA					

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL ¿Por cobrar o pagado?

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; e igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduanales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía, deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estación de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or freight.

..... CONSIGNATARIO / CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los porteadores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aquí.

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Núm. del Remitente ..... Núm. del Agente ..... SELLO DE LA ESTACION

RECIBIDO el día 2 de Noviembre de 1923, con sujecion a la clasificación y tarifas en vigor en la fecha de la expedición de este conocimiento.

En la Estación Navojoa Son de A. Von Borstel

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorándose el estado del contenido en los bultos; marcada, consignada y destinada según se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que éste estuviere situado en la línea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto a las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Co.

Destino San Francisco Cal. (Gibraltar Wesado de California EUA

Vía SP Co. Inicial y Núm. del carro SP 23993

Imp. Arvedaño, S. A. 1923

Núms. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Peso sujetos a corrección
L.S.J.	1000	Sacos	Cow Peas (Frijol Ojo Negro)		50.500 Ks
			S L & C.		
			C/o Manuel F. Gonzalez		
			Nogales Son.		

Clase	Kilogramos		Cuota por 1,000 kilogramos	Cantidad	
D-1			17/5/26		
1½-1					
1					
2	0		9		
3					
4			16		
5	5				
6					
7					
8					
9					
10					
11					
12					
Extra					

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL ¿Por cobrar o pagado?

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; e igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduanales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía, deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estación de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or eight.

..... CONSIGNATARIO / CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los portedores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aquellas condiciones y que se relacione con los actos de dichos porteadores.

This shipment, when exported, in subject to all conditions shown on bills of lading of participating carriers, and the conditions appearing on this bill of lading are without effect when differing from those shown or other carrier's bills of lading relative to acts on the part of said carriers.

A. Von Borstel. ..... (REMITENTE / CONSIGNOR

H. Navarro. ..... JEFE DE ESTACION / AGENT

Este documento no lleva los timbres correspondientes, por estar satisfecho su importe en virtud del contrato celebrado para ello con la Secretaría de Hacienda.

19-a

10-8

CONDICIONES:

1.—El remitente deberá dar a la Compañía con toda oportunidad los documentos necesarios que permitan el libre tránsito y entrega de las mercancías en el lugar de su destino; siendo por cuenta de aquél los comisos, multas y demás penas que impongan las autoridades por la falta de tales documentos, e indemnizará a la Compañía de los perjuicios que se le causen por el motivo indicado.

2.—Al expresarse el peso de la mercancía, la fracción menor de 10 kilogramos deberá considerarse como de 10 kilogramos completos y ningún flete podrá ser menor de 50 centavos, cualesquiera que sean la cantidad de la carga transportada y la distancia recorrida.

3.—Siempre que un bulto contenga mercancías clasificadas en las tarifas con cuotas de fletes diferentes, servirá de tipo para fijar a toda la carga, el que corresponda a la mercancía que tenga el tipo más elevado.

4.—La declaración hecha en este conocimiento acerca de la naturaleza y estado de los efectos que deban ser transportados, será la única que sirva de base en las cuestiones que se susciten entre el remitente que hace la declaración y la Empresa; reservándose ésta, sin embargo, el derecho de rectificar la declaración del remitente, exigiendo de éste la apertura y reconocimiento de los bultos que contengan las mercancías en el acto de su recepción. La Compañía queda relevada de responsabilidad por las averías que ocurran o por cualquiera otra causa, en caso de falsedad cometida en la declaración; sin perjuicio de que el remitente, o en su defecto, el consignatario, sean obligados a pagar la diferencia de portes y los daños y perjuicios; reservándose la propia Compañía las demás acciones a que tenga derecho.

5.—Los fletes y gastos por carga sujeta a transportación, podrá rectificarlos en todo tiempo la Compañía y el remitente o el consignatario sólo podrán hacerlo en el acto del recibo de la carga en su destino.

6.—El remitente podrá variar el punto de destino de la mercancía interín ésta no haya llegado a su destino, así como la persona del consignatario mientras que aquélla no se haya puesto a disposición de éste; pero en ambos casos será condición precisa la de que al pedir estos cambios se devuelva el conocimiento, haciendo constar en el mismo, el remitente, con su firma, que queda anulado este documento y no de otra manera. En este caso, el remitente tendrá la obligación de pagar los gastos que por esta operación se ocasionen a la Compañía.

7.—Una vez puesta la mercancía por esta Empresa a disposición del consignatario, el remitente no tendrá ya derecho alguno sobre la propia mercancía, la cual pertenece al consignatario.

8.—Los bultos que contengan las mercancías deberán llevar el nombre y dirección del consignatario y serán sellados cuando así lo exija la Compañía. Si intervinieren Agentes Aduanales extraños al servicio de la Compañía, señalados por el remitente para el manejo de la carga en las Aduanas o Agencias Fiscales, los bultos que contengan las mercancías deberán sellarse por dichos Agentes y la falta de esto eximirá a la Compañía de toda responsabilidad en la pérdida o menoscabo de la mercancía. Efectuada la descarga en el lugar de su destino, las mercancías quedarán a riesgo de su dueño.

9.—El consignatario inquirirá el arribo de la carga en el lugar de su destino; teniendo la obligación de retirarla dentro de 48 horas y dentro de 24 si los efectos son susceptibles de perderse o averiarse. En este último caso, pasado dicho plazo de 24 horas sin haberse retirado, serán vendidos desde luego, de conformidad con lo dispuesto por el Artículo 164 del Reglamento General de Ferrocarriles.

10.—La Empresa no será responsable de la pérdida, robo, destrucción o avería, total o parcial que sufran las mercancías sujetas a transportación en los trenes o estaciones, ya procedan de caso fortuito o fuerza mayor, o ya de actos de fuerza armada o de personas que no estén al servicio de la Compañía. Igualmente no será responsable por la pérdida, desfalco o avería de las mercancías en todo o en parte, por defecto o vicio propios de las mismas, no por roturas o mermas; así como tampoco de las averías o extravíos de las mercancías cargadas por los remitentes en carros puestos a su disposición cuidados por los mismos; entendiéndose que en este último caso y aún cuando no haya sido cuidada, para presentar cualquiera reclamación, tendrá que próbar que la avería o extravío tuvo lugar en el tránsito y que es imputable a la Compañía.

11.—En caso de extravío de bultos de equipaje entregados como mercancías, para que se conduzcan en trenes de carga y siempre que estén anotados en este documento, la Compañía, en caso de responsabilidad, se obliga a pagar como indemnización hasta $50.00 por baúles o petacas grandes y hasta $10.00 por cualquier otro bulto.

12.—En caso de pérdida, desfalco o avería, en todo o en parte, que sufran las mercancías entregadas a la Compañía para su transportación, ya procedan de incendio, robo o por cualquier otra causa que pudiera imputarse a la misma Compañía, la responsabilidad de ésta quedará extinguida cuando se trate de pérdida total, abonando al reclamante el costo original de la mercancía y la devolución del flete pagado y en caso de desfalco o avería, se abonará solamente el importe del menosprecio o demérito de la mercancía, en atención a su costo original y la porción del flete que corresponda. A este fin, la persona que haga su reclamación deberá presentarla dentro del término de 30 días contados de la fecha en que haya tenido lugar la pérdida, desfalco o avería; acompañando el conocimiento con la anotación de pérdida o daño, puesta por el Agente de Estación del lugar de su destino y de los demás justificantes que acrediten la responsabilidad de la Compañía. Pasado ese término no se aceptará ninguna reclamación y al efecto, el remitente o la persona que haga esas veces, renuncia a favor de la Compañía el término que señala la fracción II del artículo 592 y III de 1043 del Código de Comercio.

13.—Los fletes y gastos sobre toda carga consignada a Estaciones que no tengan Agente, se pagarán adelantados y los efectos se entregarán solamente a su dueño o a su Agente autorizado, previa entrega del conocimiento debidamente fechado y con el acúse de recibo. En caso de que no se encuentre el dueño en la estación listo para recibir la carga, será llevada a la estación siguiente en donde haya Agente y se entregará allí previo pago del correspondiente cargo adicional.

14.—Si la mercancía no se retirase de los almacenes de la Empresa, dentro de las 48 horas siguientes a su arribo, causará el pago de almacenaje y si durase en ellos el término de 90 días y dentro de dicho término nadie la reclama en debida forma, podrá la Compañía ponerla a disposición judicial para su venta, a fin de reembolsarse del flete y demás gastos para su conducción.

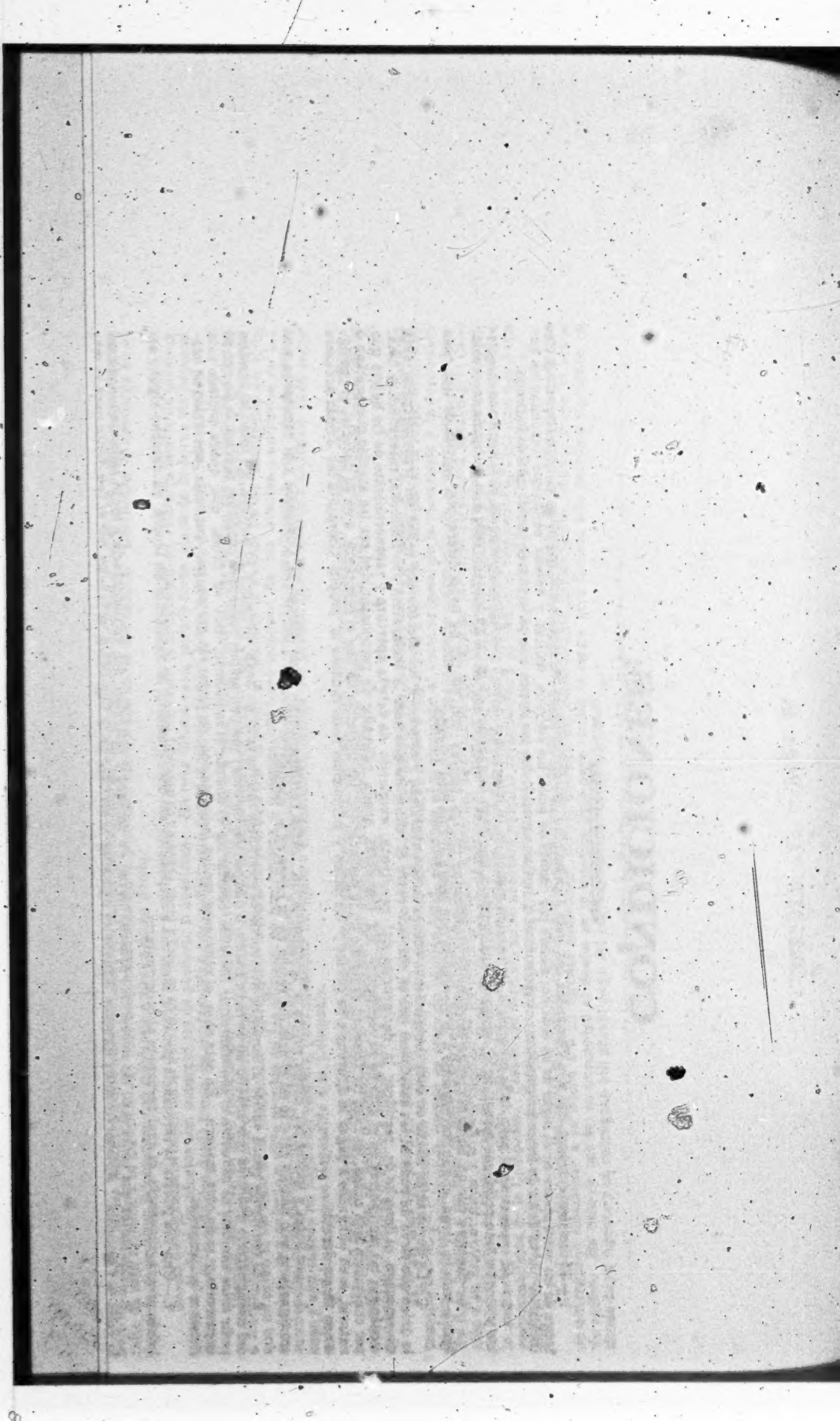
15.—En caso de que este conocimiento ampare mercancías consignadas a algún punto que no comprendan las líneas de esta Compañía, la responsabilidad de ésta cesa en el momento que las entrega al porteador que haya de continuar el transporte y a este efecto el remitente está conforme en entenderse con el nuevo porteador y renuncia los beneficios que le concede el artículo 577 del Código de Comercio.

16.—Cuando la carga deba de venderse, como lo expresan los puntos 9 y 14 y el producto de su venta no alcance a cubrir el importe de fletes y gastos que adeudare, o bien cuando la Compañía tuviere que hacer reclamaciones por el pago de fletes y gastos o por rectificación de los mismos que hubieren pagado, tendrá derecho a exijir las cantidades pendientes de pago, bien del porteador de quien haya recibido la carga, bien del primer remitente, o bien del consignatario, a su elección.

17.—Para la mayor firmeza y validez de las condiciones que en este documento se expresan, el remitente declara que expresamente renuncia el derecho que le conceden las fracciones IV, VI, VIII y X del artículo 590 del Código de Comercio.

18.—Cuando la carga se sitúe por el consignador en carro puesto a su disposición, la Compañía cobrará doble tipo de flete por la carga que exceda de diez por ciento (10%) de la capacidad marcada en el carro.

10-b



[fol. 20] EXHIBIT B TO ANSWER

Southern Pacific Railroad of Mexico, West Coast Route

Export Bill of Lading

Number of the Shipper: ——. No. of the Agent: ——.

Stamp of the Station: Navojoa, Nov. 3, 1923.

Received the 2nd day of November, 1923, subject to the classification and tariffs in force on the date of the issuing of this bill of lading, at the Station Navojoa, Son., from A. Von Borstel, the freight which is described immediately following in apparent good order, with the notations thereon, ignoring the condition of the contents in the packages; marked consigned and destined according to how it is indicated hereinafter and which this Enterprise agrees to transport to the point of destination, providing this said point is situated on the line, otherwise it will be delivered to another participating carrier to be transported to said point of destination. It is hereby mutually agreed that all transportation service shall be subject to the laws and railway regulations and to all of the conditions contained in the present document.

Consigned to Lewis Simas Jones Co.

Destination: San Francisco, Cal. (Gibraltar West), *California*, U. S. A.

Initial and number of the car: S.P.: 23993.

Via: S.P. Co.

[fol. 21]

No. & marks separately	No. of packages	Nature of packages	Description of the freight (shipment)	Class	Weights, subject to correction
L. S. J	1000	Sacks	Cow Peas (Frijol ojo Negro).	.....	50.500 Ks. (Kilograms)

S L & C., C/o Manuel F. Gonzalez, Nogales, Son.

Class	Rate, kilograms per 1000 kilograms	Amount or sum
D-1	.....	.....
1½-1	.....	.....
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
5	.....	.....
6	.....	.....
7	.....	.....
8	.....	.....
9	.....	.....
10	.....	.....
11	.....	.....
12	.....	.....
(Special)	.....	.....

Freight and expenses

The amount or value of the freight and expenses shall be paid in advance within the discretion of the Company and this shall be invariably when the merchandise or goods subject to transportation are of little value or susceptible to decomposition in all or in part and equally so when the freight is destined to stations where there is no agent.

In the freight accounts will not be included custom house nor commission charges at the frontier and ports of departure, nor what the merchandise would happen to occasion in its transit or on its arrival at the place of destination.

The amount or value of the freights, as well as the expenses that the company may happen to incur should be covered previous to the delivery of the freight to the consignee and shall be subject to rectification.

[fol. 22] Station of ——, Date: —— —, ——.

Total amount of freight: ——.

Expenses advanced for account of: ——.

Loading and Unloading: ——.

Revenue Stamps: ——.

Total to collect or paid: ——.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner of the freight. —— —— (Consignee).

This freight (or shipment) when submitted to exportation shall be subject to all of the conditions shown on bills of lading of participating carriers and the conditions appearing on this bill of lading are without effect, when differing from those shown on other carriers' bills of lading relative to acts on the part of said carriers.

A. Von Borstel (Consignor). H. Navarro (Station Agent).

This document does not carry thereon the corresponding revenue stamps, as the amount thereof has been fully satisfied by virtue of the contract entered into concerning same with the Secretary of Treasurer or Finance.

Conditions

1. The shipper shall deliver to the Company with due diligence the necessary documents that will permit the free transit and delivery of the merchandise at the place of its destination; the seizure or confiscation, fines or other penalties that may be imposed by the authorities for the lack of such documents being charged to his account and he shall indemnify the Company for the damages that may be caused to the same for the reason indicated.

2. In expressing the weight of the merchandise, the fraction less than 10 kilograms shall be considered as that of [fol. 23] ten kilograms complete and no freight can be less than 50 centavos (Translator's note: 50 centavos is equivalent to 25 cents American money) whatever may be the quantity of the merchandise transported and the distance covered.

3. Whenever a package contains classified goods in the tariffs with different freight rates, it shall serve as a type to fix to all of the load that which corresponds to the merchandise that has or bears the highest rate.

4. The statement made in this bill of lading concerning the nature and condition of the effects which should be transported will be the only one which shall serve as a basis in the question which may arise between the shipper who makes the statement or declaration and the Enterprise; the latter reserving, however, the right of correcting the declaration of the shipper exacting from him the opening and examination of the packages that contain the merchandise in the act of its reception or receipt. The Company remains relieved of responsibility for the damages that may occur or for any other cause, in case of falsehood committed in the declaration; without prejudice that the shipper or in his absence, the consignee shall be obliged to pay the difference in freight rates and the damages and prejudices [fol. 24] the Company itself reserving its right to all the other actions or suits.

5. The freight rates and the expenses for freight subject to transporation can be rectified at any time by the Company and the shipper or the consignee can only do so upon the act of the receipt of the freight at destination.

6. The shipper can change the point of destination of the merchandise while the same has not arrived at its destination as likewise the person of the consignee while it has not been placed at the disposition of the latter; but in either case it will be a precise condition that upon the request of these changes, the bill of lading be returned, the shipper causing to be inscribed therein with his signature that this document remains nullified and not in another manner. In this case the shipper shall be obliged to pay the expenses that because of this operation are incurred by the Company.

7. Once the merchandise has been placed by this Enterprise at the disposition of the consignee, the shipper will then have no right whatever upon the merchandise itself, which belongs to the consignee.

8. The packages that contain the merchandise shall bear thereon the name and address of the consignee and they [fol. 25] shall be sealed when thus exacted by the Company. If custom house agents foreign to the service of the Company should intervene, designated by the shipper for the handling of the freight at the custom houses or fiscal agencies, the bundles that contain the merchandise shall be sealed by said agents and the lack of this shall exempt the Company from all responsibility in the loss or deterioration of the merchandise. The unloading of same having been effected at the place of its destination, the goods shall remain at the risk of the owner.

9. The consignee shall inquire as to the arrival of the freight at the place of its destination, having the obligation of removing same within 48 hours and within 24 hours if the effects are susceptible of perishing or damage. In this latter case the period of 24 hours having elapsed without being removed, they shall be sold at once, in conformity with the proviso of Article 164 of the General Railway By-Laws. (Trans. note: Railway Rules and Regulations.)

10. The Enterprise will not be responsible for the loss, theft, destruction or damage, total or partial, suffered by

the merchandise subject to transportation on the trains or stations, whether though the same shall proceed or emanate through a fortuitous case or superior force, or through acts [fol. 26] of an armed force or of persons who may not be at the service of the Company, equally so it will not be responsible for the loss, defalcation or damage of the merchandise in all or in part, through defect or vices belonging properly to the same, nor for breakage or shrinkage and likewise neither for the damages or deviations of the merchandise loaded by the shippers in cars placed at their disposition cared for by the same; it being understood that in this latter case and even when it has not been cared for in order to present any claim, he will have to prove that the damage or deviation (going astray) took place in transit and that it is chargeable or imputable to the Company.

11. In case of the going astray of baggage packages delivered as merchandise in order to be conducted on freight trains and providing that these packages are noted in this document, the Company, in case of responsibility, obligates itself to pay as indemnification up to $50.00 (Mexican ½ U. S. money) for trunks or large grips and up to $15 (Mexican) for any other bundles.

12. In case of loss, defalcation or damage in all or in part suffered by the merchandise delivered to the Company for its transportation, whether same be due to fire, theft or for any other cause that could be imputed to the same Com- [fol. 27] pany the responsibility of the latter shall be extinguished when a total loss is involved and crediting to the claimant the original cost of the goods and the return of the freight paid and in case of defalcation or damage, there shall be credited only the amount of the diminution or depreciation of the merchandise determined by its original cost and that portion of the freight rate that may correspond to it. For this purpose the person who makes these claims should present it within the period of 30 days counted from the time or date in which the loss took place, defalcation or damage, accompanying the bill of lading with the notation of loss or damage, placed thereon by the agent of the station (station agent) of the place of its destination and of the other justifications that accredit the responsibility of the Company. After the lapse of this time, no claim shall be accepted and in effect, the shipper

or the person that takes such steps renounces in favor of the Company the term of time that fraction II of Article 592 and III of 1043 of the Commercial Code designates.

13. The freight rates and expenses upon all freight consigned to stations that have no agents, shall be paid in advance and the effects or goods shall be delivered only to their owner or to the authorized Agent, upon the previous delivery of the bill of lading duly dated and with acknowl- [fol. 28] ment of receipt thereon. In case that the owner is not found at the Station ready to receive the freight, it shall be taken to the following station where there is an agent and it shall be delivered there upon the previous payment of a corresponding additional charge.

14. If the merchandise is not withdrawn from the warehouses of the Enterprise within the 48 hours following its arrival, it will occasion the payment of storage and if it should remain in them for a period of 90 days and if within that time no one claims the same in due form, the Company can place the same at judicial disposition for its sale to the end or for the purpose of reimbursing itself the freight and other expenses incidental to its conduction.

15. In case that this bill of lading pertains to merchandise consigned to some point not within the lines of this Company, the responsibility of this Company ceases at the moment that same are delivered to the participating carrier who shall have to continue the transportation and for this purpose or effect the shipper hereby agrees to come to an understanding with the new participating carrier and renounces or waives the benefits conceded to him by Article 577 of the Commercial Code.

16. When the freight should be sold as expressed or provided by clauses 9 and 14 and the product of its sale [fol. 29] does not reach the figure high enough to cover the amount of the freight and other charges that may be due the same, or on the other hand when the Company should have to demand or cause to make demands for the payment of freight rates and expenses or for the rectification of the same that they may have paid, it shall have the right to demand the outstanding accounts of payment, either from the participating carrier from whom he may

have received the freight either from the first shipper or either from the consignee, at its election.

17. For the greater firmness and validity of the conditions that are expressed in this document, the shipper declares that he expressly waives the right conceded to him by fractions IV, VI, VIII, and X of Article 590 of the Commercial Code.

18. When the freight is loaded by the consignor in a car placed at his disposal, the Company shall collect double the rate of freight for the load that exceeds (10%) ten per cent of the capacity marked on the car.

[fol. 30] STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Jose H. Alfonso, being first duly sworn, deposes and says: That he is a citizen of the United States and over the age of twenty one years; that he is by profession an interpreter and translator of the Spanish language into English and the English language into Spanish; with an office at Suite 316 No. 948 Market Street, Liberty Bank Building, in the aforesaid City and County and State;

That the translation of the Bill of Lading annexed hereto in Spanish, is a true and correct translation of said Spanish Bill of Lading of the Southern Pacific Railroad of Mexico, a true and correct translation of same into the English language and fully expresses the true and correct value thereof.

Jose H. Alfonso.

Subscribed and sworn to before me this 24th day of November, A. D. 1926. Lester Ball, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

(Here follows Exhibit "C" to Answer, side folios 30-a and 30-b)

EXHIBIT "C" TO ANSWER - Page 1

Forma 10060 (Revisada)

FERROCARRIL SUD-PACIFICO DE MEXICO.

RUTA DE LA COSTA OCCIDENTAL.

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Navojoa
Nov 13-926

SELLO DE LA ESTACION

Núm. del Remitente ..... Núm. del Agente .....

RECIBIDO el día 13 de Noviembre de 192 3, con sujeción a la clasificación y tarifas en vigor en la fecha de la expedicion de este conocimiento.

En la Estación Navojoa Son Mex de Agustin Von Boratel

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorandose el estado del contenido en los bultos; marcada, consignada y destinada segun se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que este estuviere situado en la línea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto a las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Company

Destino New Orleans Estado de Luissiana USA

Vía SPM- SP Co GHSA Sunset Inicial y Núm. del carro GHSA 36042

Imp. Avendaño, S. A.—1925

Núms. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Pesos sujetos a corrección
I.S.J.	985	Sacos	Cow Peas (Frijol Ojo Negro) con		39400 Ks
Cow Peas 88 Lbs Net			40 Kilos neto c/u		
			S L & C		
			Flte a cobrar.		
			C/o Manuel F. Gonzalez.		
			Nogales Son.		

Clase	Kilogramos		Cuota por 1,000 kilogramos		Cantidad	
D-1						
1A 1						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
UNEX						

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL. ¿Por cobrar o pagado? .....

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; o igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduánales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía, deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estacion de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or freight.

..... (CONSIGNATARIO
) CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los porteadores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aque-

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Núm. del Remitente ..... Núm. del Agente ..... SELLO DE LA ESTACION

RECIBIDO el dia 13 de Noviembre de 192 3, con sujeción a la clasificación y tarifas en vigor en la fecha de la expedicion de este conocimiento.

En la Estación Navojoa Son Mex de Agustin Von Borstel

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorandose el estado del contenido en los bultos; marcada, consignada y destinada segun se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que este estuviere situado en la linea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto a las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Company

Destino New Orleans Estado de Luisiana USA

Vía SPM- EP Co GHSA Sunset Inicial y Núm. del carro GHSA 36042

Imp. Avendaño, S. A.—mdo.

Nums. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Pesos sujetos a corrección
I.S.J.	985	Sacos	Cow Peas (Frijol Ojo Negro) con		39400 Ks
Cow Peas			40 Kilos neto c/u		
88 Lbs					
Net					
			S L & C		
			Flte a cobrar.		
		C/o	Manuel F. Gonzalez.		
			Nogales Son.		

Clase	Kilogramos		Cuota por 1,000 kilogramos		Cantidad	
D-1						
1¼ 1						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
EXPLOS.						

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL. ¿Por cobrar o pagado? .....

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; e igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduanales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía, deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estacion de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or freight.

..... (CONSIGNATARIO / CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los porteadores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aquellas condiciones y que se relacione con los actos de dichos porteadores.

This shipment, when exported, is subject to all conditions shown on bills of lading of participating carriers, and the conditions appearing on this bill of lading are without effect when differing from those shown or other carrier's bills of lading relative to acts on the part of said carriers.

Por Agustin VonBorstel. REMITENTE / CONSIGNOR ..... H. Navarro. ..... (JEFE DE ESTACION / AGENT

J.A. Morales.

Este documento no lleva los timbres correspondientes, por estar satisfecho su importe en virtud del contrato celebrado para ello con la Secretaría de Hacienda.

30-a

18-8

CONDICIONES:

1.—El remitente deberá dar a la Compañía con toda oportunidad los documentos necesarios que permitan el libre tránsito y entrega de las mercancías en el lugar de su destino; siendo por cuenta de aquél los comisos, multas y demás penas que impongan las autoridades por la falta de tales documentos, e indemnizará a la Compañía de los perjuicios que se le causen por el motivo indicado.

2.—Al expresarse el peso de la mercancía, la fracción menor de 10 kilogramos deberá considerarse como de 10 kilogramos completos y ningún flete podrá ser menor de 50 centavos, cualesquiera que sean la cantidad de la carga transportada y la distancia recorrida.

3.—Siempre que un bulto contenga mercancías clasificadas en las tarifas con cuotas de fletes diferentes, servirá de tipo para fijar a toda la carga, el que corresponda a la mercancía que tenga el tipo más elevado.

4.—La declaración hecha en este conocimiento acerca de la naturaleza y estado de los efectos que deban ser transportados, será la única que sirva de base en las cuestiones que se susciten entre el remitente que hace la declaración y la Empresa; reservándose esta, sin embargo, el derecho de rectificar la declaración del remitente, exigiendo de éste la apertura y reconocimiento de los bultos que contengan las mercancías en el acto de su recepción. La Compañía queda relevada de responsabilidad por las averías que ocurran o por cualquiera otra causa, en caso de falsedad cometida en la declaración; sin perjuicio de que el remitente, o en su defecto, el consignatario, sean obligados a pagar la diferencia de portes y los daños y perjuicios; reservándose la propia Compañía las demás acciones a que tenga derecho.

5.—Los fletes y gastos por carga sujeta a transportación, podrá rectificarlos en todo tiempo la Compañía y el remitente o el consignatario sólo podrán hacerlo en el acto del recibo de la carga en su destino.

6.—El remitente podrá variar el punto de destino de la mercancía interin ésta no haya llegado a su destino, así como la persona del consignatario mientras que aquélla no se haya puesto a disposición de éste; pero en ambos casos será condición precisa la de que al pedir estos cambios se devuelva el conocimiento, haciendo constar en el mismo, el remitente, con su firma, que queda anulado este documento y no de otra manera. En este caso, el remitente tendrá la obligación de pagar los gastos que por esta operación se ocasionen a la Compañía.

7.—Una vez puesta la mercancía por esta Empresa a disposición del consignatario, el remitente no tendrá ya derecho alguno sobre la propia mercancía, la cual pertenece al consignatario.

8.—Los bultos que contengan las mercancías deberán llevar el nombre y dirección del consignatario y serán sellados cuando así lo exija la Compañía. Si intervinieren Agentes Aduanales extraños al servicio de la Compañía, señalados por el remitente para el manejo de la carga en las Aduanas o Agencias Fiscales, los bultos que contengan las mercancías deberán sellarse por dichos Agentes y la falta de esto eximirá a la Compañía de toda responsabilidad en la pérdida o menoscabo de la mercancía. Efectuada la descarga en el lugar de su destino, las mercancías quedarán a riesgo de su dueño.

9.—El consignatario inquirirá el arribo de la carga en el lugar de su destino; teniendo la obligación de retirarla dentro de 48 horas y dentro de 24 si los efectos son susceptibles de perderse o averiarse. En este último caso, pasado dicho plazo de 24 horas sin haberse retirado, serán vendidos desde luego, de conformidad con lo dispuesto por el Artículo 164 del Reglamento General de Ferrocarriles.

10.—La Empresa no será responsable de la pérdida, robo, destrucción o avería, total o parcial que sufran las mercancías sujetas a transportación en los trenes o estaciones, ya procedan de caso fortuito o fuerza mayor, o ya de actos de fuerza armada o de personas que no estén al servicio de la Compañía. Igualmente no será responsable por la pérdida, desfalco o avería de las mercancías en todo o en parte, por defecto o vicio propios de las mismas, no por roturas o mermas; así como tampoco de las averías o extravíos de las mercancías cargadas por los remitentes en carros puestos a su disposición cuidados por los mismos; entendiéndose que en este último caso y aún cuando no haya sido cuidada, para presentar cualquiera reclamación, tendrá que probar que la avería o extravío tuvo lugar en el tránsito y que es imputable a la Compañía.

11.—En caso de extravío de bultos de equipaje entregados como mercancías, para que se conduzcan en trenes de carga y siempre que estén anotados en este documento, la Compañía, en caso de responsabilidad, se obliga a pagar como indemnización hasta $50.00 por baúles o petacas grandes y hasta $15.00 por cualquier otro bulto.

12.—En caso de pérdida, desfalco o avería, en todo o en parte, que sufran las mercancías entregadas a la Compañía para su transportación, ya procedan de incendio, robo o por cualquier otra causa que pudiera imputarse a la misma Compañía, la responsabilidad de esta quedará extinguida cuando se trate de pérdida total, abonando al reclamante el costo original de la mercancía y la devolución del flete pagado y en caso de desfalco o avería, se abonará solamente el importe del menosprecio o demérito de la mercancía, en atención a su costo original y la porción del flete que corresponda. A este fin, la persona que haga su reclamación deberá presentarla dentro del término de 30 días contados de la fecha en que haya tenido lugar la pérdida, desfalco o avería; acompañando el conocimiento con la anotación de pérdida o daño, puesta por el Agente de Estación del lugar de su destino y de los demás justificantes que acrediten la responsabilidad de la Compañía. Pasado ese término no se aceptará ninguna reclamación y al efecto, el remitente o la persona que haga sus veces, renuncia a favor de la Compañía el término que señala la fracción II del artículo 592 y III de 1043 del Código de Comercio.

13.—Los fletes y gastos sobre toda carga consignada a Estaciones que no tengan Agente, se pagarán adelantados y los efectos se entregarán solamente a su dueño o a su Agente autorizado, previa entrega del conocimiento debidamente fechado y con el acuse de recibo. En caso de que no se encuentre el dueño en la estación listo para recibir la carga, será llevada a la estación siguiente en donde haya Agente y se entregará allí previo pago del correspondiente cargo adicional.

14.—Si la mercancía no se retirase de los almacenes de la Empresa, dentro de las 48 horas siguientes a su arribo, causará el pago de almacenaje y si durase en ellos el término de 90 días y dentro de dicho término nadie la reclama en debida forma, podrá la Compañía ponerla a disposición judicial para su venta, a fin de reembolsarse del flete y demás gastos para su conducción.

15.—En caso de que este conocimiento ampare mercancías consignadas a algún punto que no comprendan las líneas de esta Compañía, la responsabilidad de ésta cesa en el momento que las entrega al porteador que haya de continuar el transporte y a este efecto el remitente está conforme en entenderse con el nuevo porteador y renuncia los beneficios que le concede el artículo 577 del Código de Comercio.

16.—Cuando la carga deba de venderse, como lo expresan los puntos 9 y 14 y el producto de su venta no alcance a cubrir el importe de fletes y gastos que adeudare, o bien cuando la Compañía tuviere que hacer reclamaciones por el pago de fletes y gastos o por rectificación de los mismos que hubieren pagado, tendrá derecho a exijir las cantidades pendientes de pago, bien del porteador de quien haya recibido la carga, bien del primer remitente, o bien del consignatario, a su elección.

17.—Para la mayor firmeza y validez de las condiciones que en este documento se expresan, el remitente declara que expresamente renuncia el derecho que le conceden las fracciones IV, VI, VIII y X del artículo 590 del Código de Comercio.

18.—Cuando la carga se sitúe por el consignador en carro puesto a su disposición, la Compañía cobrará doble tipo de flete por la carga que exceda de diez por ciento (10%) de la capacidad marcada en el carro.

18-b

30-b

[fol. 31] EXHIBIT D TO ANSWER

Southern Pacific Railroad of Mexico, West Coast Route

Export Bill of Lading

Number of the Shipper: ——. No. of the Agent: ——.

Stamp of the Station: Navojoa, Nov. 13, -926.

Received the 13th day of November, 1923, subject to the classification and tariffs in force on the date of the issuing of this bill of lading, at the Station Navojoa, Son., Mex., from Augustin Von Borstel, the freight which is described immediately following in apparent good order, with the notations thereon, ignoring the condition of the contents in the packages; marked consigned and destined according to how it is indicated hereinafter and which this Enterprise agrees to transport to the point of destination, providing this said point is situated on the line, otherwise it will be delivered to another participating carrier to be transported to said point of destination. It is hereby mutually agreed that all transportation service shall be subject to the laws and railway regulations and to all the conditions contained in the present document.

Consigned to: Lewis Simas Jones Company.

Destination: New Orleans, State of Louisiana, U. S. A.

Initial and number of the car: G.H.S.A. 36042.

Via: S.P.M.-S.P. Co., G.H.S.A. Sunset.

[fol. 32]

No. & marks separately	No. of packages	Nature of packages	Description of the freight (shipment)	Class	Weights, subject to correction
L. S. J. Cow Peas	985	Sacks	Cow Peas (Frijol ojo Negro) with 40 kilos each one net.	....	39400 Ks. (Kilograms).
88 lbs. Net.					

S L & C. Freight for Collection. c/o Manuel F. Gonzalez, Nogales, Son.

Class	Rate, kilograms per 1000 kilograms	Amount or sum	Freight and expenses
D-1	.....	.....	The amount or value of the
1½-1	.....	.....	freight and expenses shall be paid
1	.....	.....	in advance within the discretion
2	.....	.....	of the Company and this shall be
3	.....	.....	invariably when the merchandise
4	.....	.....	or goods subject to transportation
5	.....	.....	are of little value or susceptible

S L & C. Freight for Collection. c/o Manuel F. Gonzalez, Nogales, Son..

Class	Rate, kilograms per 1000 kilograms	Amount or sum	Freight and expenses
6	.....	.....	to decomposition in all or in part
7	.....	.....	and equally so when the freight
8	.....	.....	is destined to stations where there
9	.....	.....	is no agent.
10	.....	.....	In the freight accounts will not
11	.....	.....	be included custom house nor
12	.....	.....	commission charges at the fron-
(Special)	.....	.....	tier and ports of departure, nor what the merchandise would happen to occasion in its transit or on its arrival at the place of destination,

The amount or value of the freights, as well as the expenses that the company may happen to incur should be covered previous [fol. 33] to the delivery of the freight to the consignee and shall be subject to rectification.

Station of ——, Date: —— —, ——.

Total amount of freight: ——.

Expenses advanced for account of: ——.

Loading and Unloading: ——.

Revenue Stamps: ——.

Total to collect or paid: ——.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner of the freight.

—— —— (Consignee).

This freight (or shipment) when submitted to exportation shall be subject to all of the conditions shown on bills of lading of participating carriers and the conditions appearing on this bill of lading are without effect, when differing from those shown on other carriers' bills of lading relative to acts on the part of said carriers.

Agustin Von Borstel (Consignor), by J. A. Morales.

H. Navarro (Station Agent).

This document does not carry thereon the corresponding revenue stamps, as the amount thereof has been fully satisfied by virtue of the contract entered into concerning same with the Secretary of the Treasurer or Finance.

Conditions

1. The shipper shall deliver to the Company with due diligence the necessary documents that will permit the free transit and delivery of the merchandise at the place of its destination; the seizure or confiscation, fines or other penalties that may be imposed by the authorities for the lack of such documents being charged to his account and he shall indemnify the Company for the damages that may be [fol. 34] caused to the same for the reason indicated.

2. In expressing the weight of the merchandise, the fraction less than 10 kilograms shall be considered as that of ten kilograms complete and no freight can be less than 50 centavos (Translator's note: a centavo is equivalent to 25 cents American money) whatever may be the quantity of the merchandise transported and the distance covered.

3. Whenever a package contains classified goods in the tariffs with different freight rates, it shall serve as a type to fix to all of the load that which corresponds to the merchandise that has or bears the highest rate.

4. The statement made in this bill of lading concerning the nature and condition of the effects which should be transported will be the only one which shall serve as a basis in the questions which may arise between the shipper who makes the statement or declaration and the Enterprise; the latter reserving, however, the right of correcting the declaration of the shipper exacting from him the opening and examination of the packages that contain the merchandise in the act of its reception or receipt. The Company remains relieved of responsibility for the damages that may occur or for any other cause, in case of falsehood committed [fol. 35] in the declaration; without prejudice that the shipper or in his absence, the consignee shall be obliged to pay the difference in freight rates and the damages and prejudices the Company itself reserving its right to all the other actions or suits.

5. The freight rates and the expenses for freight subject to transportation can be rectified at any time by the Company and the shipper or the consignee can only do so upon the act of the receipt of the freight at destination.

6. The shipper can change the point of destination of the merchandise while the same has not arrived at its destination as likewise the person of the consignee while it has not been placed at the disposition of the latter; but in either case it will be a precise condition that upon the request of these changes, the bill of lading be returned, the shipper causing to be inscribed therein with his signature that this document remains nullified and not in another manner. In this case the shipper shall be obliged to pay the expenses that because of this operation are incurred by the Company.

7. Once the merchandise has been placed by this Enterprise at the disposition of the consignee, the shipper will [fol. 36] then have no right whatever upon the merchandise itself, which belongs to the consignee.

8. The packages that contain the merchandise shall bear thereon the name and address of the consignee and they shall be sealed when thus exacted by the Company. If custom house agents foreign to the service of the Company should intervene, designated by the shipper for the handling of the freight at the custom houses or fiscal agencies, the bundles that contain the merchandise shall be sealed by said agents and the lack of this shall exempt the Company from all responsibility in the loss or deterioration of the merchandise. The unloading of same having been effected at the place of its destination, the goods shall remain at the risk of the owner.

9. The consignee shall inquire as to the arrival of the freight at the place of its destination, having the obligation of removing same within 48 hours and within 24 hours if the effects are susceptible of perishing or damage. In this latter case the period of 24 hours having elapsed without being removed, they shall be sold at once, in conformity with the proviso of Article 164 of the General Railway By-Laws. (Trans. note: Railway Rules and Regulations.)

10. The Enterprise will not be responsible for the loss, theft, destruction or damage, total or partial, suffered by [fol. 37] the merchandise subject to transportation on the trains or stations, whether through the same shall proceed or emanate through a fortuitous case or superior force, or through acts of an armed force or of persons who may not be at the service of the Company, equally so it will not be

responsible for the loss, defalcation or damage of the merchandise in all or in part, through defect or vices belonging properly to the same, nor for breakage or shrinkage and likewise neither for the damages or deviations of the merchandise loaded by the shippers in cars placed at their disposition cared for by the same; it being understood that in this latter case and even when it has not been cared for in order to present any claim, he will have to prove that the damage or deviation (going astray) took place in transit and that it is chargeable or imputable to the Company.

11. In case of the going astray of baggage packages delivered or merchandise in order to be conducted on freight trains and providing that these packages are noted in this document, the Company, in case of responsibility, obligates itself to pay an indemnification up to $50.00 (Mexican ½ U. S. money) for trunks or large grips and up to $15 (Mexican) for any other bundles.

[fol. 38] 12. In case of loss, defalcation or damage in all or in part suffered by the merchandise delivered to the Company for its transportation, whether same be due to fire, theft or for any other cause that could be imputed to the same Company the responsibility of the latter shall be extinguished when a total loss is involved and crediting to the claimant the original cost of the goods and the return of the freight paid and in case of defalcation or damage, there shall be credited only the amount of the diminution or depreciation of the merchandise determined by its original cost and that portion of the freight rate that may correspond to it. For this purpose the person who makes these claims should present it within the period of 30 days counted from the time or date in which the loss took place, defalcation or damage; accompanying the bill of lading with the notation of loss or damage, placed thereon by the agent of the station (station agent) of the place of its destination and of the other justifications that accredit the responsibility of the Company. After the lapse of this time, no claim shall be accepted and in effect, the shipper or the person that takes such steps renounces in favor of the Company the term of time that fraction II of Article 592 and III of 1043 of the Commercial Code designates.

[fol. 39] 13. The freight rates and expenses upon all freight consigned to stations that have no agents, shall be

paid in advance and the effects or goods shall be delivered only to their owner or to the authorized Agent, upon the previous delivery of the bill of lading duly dated and with acknowledgment of receipt thereon. In case that the owner is not found at the Station ready to receive the freight, it shall be taken to the following station where there is an agent and it shall be delivered there upon the previous payment of a corresponding additional charge.

14. If the merchandise is not withdrawn from the warehouses of the Enterprise within the 48 hours following its arrival, it will occasion the payment of storage and if it should remain in them for a period of 90 days and if within that time no one claims the same in due form, the Company can place the same at judicial disposition for its sale to the end or for the purpose of reimbursing itself the freight and other expenses incidental to its conduction.

15. In case that this bill of lading pertains to merchandise consigned to some point not within the lines of this Company, the responsibility of this Company ceases at the moment that same are delivered to the participating car-
[fol. 40] rier who shall have to continue the transportation and for this purpose or effect the shipper hereby agrees to come to an understanding with the new participating carrier and renounces or waives the benefits conceded to him by Article 577 of the Commercial Code.

16. When the freight should be sold as expressed or provided by clauses 9 and 14 and the product of its sale does not reach the figure high enough to cover the amount of the freight and other charges that may be due the same, or on the other hand when the Company should have to demand or cause to make demands for the payment of freight rates and expenses or for the rectification of the same that they may have paid, it shall have the right to demand the outstanding accounts of payment, either from the participating carrier from whom he may have received the freight either from the first shipper or either from the consignee, at its election.

17. For the greater firmness and validity of the conditions that are expressed in this document, the shipper declares that he expressly waives the right conceded to him

by fractions IV, VI, VIII, and X of Article 590 of the Commercial Code.

18. When the freight is loaded by the consignor in a car [fol. 41] placed at his disposal, the Company shall collect double the rate of freight for the load that exceeds (10%) ten per cent of the capacity marked on the car.

STATE OF CALIFORNIA,
City and County of San Francisco, ss.:

Jose H. Alfonso, being first duly sworn, deposes and says: That he is a citizen of the United States and over the age of twenty one years; that he is by profession an interpreter and translator of the Spanish language into English and the English language into Spanish, with an office at Suite 316 No. 948 Market Street, Liberty Bank Building, in the aforesaid City and County and State;

That the translation of the Bill of Lading annexed hereto in Spanish is a true and correct translation of said Spanish Bill of Lading of the Southern Pacific Railroad of Mexico, a true and correct translation of same into the English language and fully expresses the true and correct value thereof.

Jose H. Alfonso.

Subscribed and sworn to before me this 24th day of November, A. D. 1926. Lester Ball, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

(Here follows Exhibit "E" to Answer, side folios 41-a and 41-b)

EXHIBIT "E" TO ANSWER

Forma 10060 (Revisada)

FERROCARRIL SUD-PACIFICO DE MEXICO.

RUTA DE LA COSTA OCCIDENTAL

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Novbre 24-923

Navojoa.

SELLO DE LA ESTACION

Núm. del Remitente ..... Núm. del Agente .....

RECIBIDO el día 24 de Noviembre de 192 3, con sujeción a la clasificación y tarifas en vigor en la fecha de la expedición de este conocimiento.

En la Estación Navojoa Son de Agencia Comercial del Mayo

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorándose el estado del contenido en los bultos; marcada, consignada y destinada según se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que éste estuviere situado en la línea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto á las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Company (Gibraltar Warehouse)

Destino San Francisco Estado de California EUA

Vía S.P. Co to destination Inicial y Núm. del carro SP- 84996

Imp. Avendaño S. A. 1924

Núms. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Pesos sujetos a corrección
L.S.J.	840	Sacos	Cow Peas (Frijol Ojo Negro)		42420 K
Cow Peas			con 50.5 kilos bruto c/u		
50 Kilos Net.					
			S L & C		
			Flete a cobrar.		
			C/o Manuel F. Gonzalez.		
			Nogales Son.		

Clase	Kilogramos	Cuota por cada kilogramos	Cantidad
D-1			
1½ 1	Carro pedido de 80.000 lbs.		
1	Proporcionado de 100.000 lbs por		
2	el S.P. de M.		
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
MINIMA			

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL ¿Por cobrar o pagado? .....

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; o igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduanales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía, deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estación de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or freight.

..... CONSIGNATARIO / CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los portadores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aquellas condiciones y que se relacione con los actos de dichos portadores.

CONOCIMIENTO DE EXPORTACION
EXPORT BILL OF LADING

Núm. del Remitente ..... Núm. del Agente ..... SELLO DE LA ESTACION

RECIBIDO el día 24 de Noviembre de 192 3, con sujeción a la clasificación y tarifas en vigor en la fecha de la expedición de este conocimiento.

En la Estación Navojoa Son de Agencia Comercial del Mayo

la carga que se describe en seguida, en aparente buen estado, con las observaciones anotadas, ignorándose el estado del contenido en los bultos; marcada, consignada y destinada según se indica a continuación y la que esta Empresa conviene en transportar al punto de destino siempre que éste estuviere situado en la línea, de otra manera la entregará a otro porteador para ser transportada a dicho punto de destino. Queda convenido mutuamente que todo servicio de transportación estará sujeto a las Leyes y Reglamentos ferroviarios y a todas las condiciones contenidas en el presente documento.

Consignada a Lewis Simas Jones Company (Gibraltar Warehouse)

Destino San Francisco Estado de California EUA

Vía S.P. Co to destination Inicial y Núm. del carro SP- 84996

Imp. Avendaño S. A. 1925

Núms. y Marcas por separado	Núm. de bultos	Naturaleza de los bultos	DESCRIPCION DE LA CARGA	Clase	Pesos sujetos a corrección
L.S.J. Cow Peas 50 Kilos Net.	840	Sacos	Cow Peas (Frijol Ojo Negro) con 50.5 kilos bruto c/u		42420 K
			S L & C		
			Flete a cobrar.		
			C/o Manuel F. Gonzalez. Nogales Son.		

Clase	Kilogramos	Cuota por 1.000 kilogramos	Cantidad
D-1			
1	Carro pedido de 80.000 lbs.		
1	Proporcionado de 100.000 lbs por		
2	el S.P. de M.		
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
EXPRESS			

Importe total de Flete .....

Gastos adelantados por cuenta de .....

Carga y descarga .....

Timbres .....

TOTAL ¿Por cobrar o pagado? .....

FLETES Y GASTOS

El importe de los fletes y gastos se pagará anticipadamente, a juicio de la Compañía e invariablemente lo será cuando las mercancías sujetas a transportación sean de poco valor o susceptibles de descomposición en todo o parte; e igualmente cuando la carga vaya destinada a estaciones donde no haya Agente.

En las cuentas de fletes no se comprenderán gastos aduanales ni de comisión en las fronteras y puertos de salida, ni los que llegare a causar la mercancía en su tránsito o en su llegada al lugar de su destino.

Tanto el importe de los fletes, como los gastos que llegare a hacer la Compañía deberán quedar cubiertos previamente a la entrega de la carga al consignatario y estarán sujetos a rectificación.

Estación de .....

Fecha .....

Recibí la carga que aquí se describe en buen estado aparente, o en las condiciones que se hacen notar. Por el consignatario o dueño de la carga.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner or freight.

..... CONSIGNATARIO / CONSIGNEE

Esta carga sometida a exportación estará sujeta a todas las condiciones que aparezcan en los conocimientos de los porteadores que intervengan en su manejo y las condiciones de que habla el presente conocimiento, dejarán de tener efecto en cuanto difiera de aquellas condiciones y que se relacione con los actos de dichos porteadores.

This shipment, when exported, is subject to all conditions shown on bills of lading of participating carriers, and the conditions appearing on this bill of lading are without effect when differing from those shown on other carrier's bills of lading relative to acts on the part of said carriers.

Agencia Comercial del Mayo REMITENTE / CONSIGNOR ..... H. Navarro. JEFE DE ESTACION / AGENT

Por: J.A. Morales

Este documento no lleva los timbres correspondientes, por estar satisfecho su importe en virtud del contrato celebrado para ello con la Secretaría de Hacienda.

41-a

CONDICIONES:

1.—El remitente deberá dar a la Compañía con toda oportunidad los documentos necesarios que permitan el libre tránsito y entrega de las mercancías en el lugar de su destino; siendo por cuenta de aquél los comisos, multas y demás penas que impongan las autoridades por la falta de tales documentos, e indemnizará a la Compañía de los perjuicios que se le causen por el motivo indicado.

2.—Al expresarse el peso de la mercancía, la fracción menor de 10 kilogramos deberá considerarse como de 10 kilogramos completos y ningún flete podrá ser menor de 50 centavos, cualesquiera que sean la cantidad de la carga transportada y la distancia recorrida.

3.—Siempre que un bulto contenga mercancías clasificadas en las tarifas con cuotas de fletes diferentes, servirá de tipo para fijar a toda la carga, el que corresponda a la mercancía que tenga el tipo más elevado.

4.—La declaración hecha en este conocimiento acerca de la naturaleza y estado de los efectos que deban ser transportados, será la única que sirva de base en las cuestiones que se susciten entre el remitente que hace la declaración y la Empresa; reservándose ésta, sin embargo, el derecho de rectificar la declaración del remitente, exigiendo de éste la apertura y reconocimiento de los bultos que contengan las mercancías en el acto de su recepción. La Compañía queda relevada de responsabilidad por las averías que ocurran o por cualquiera otra causa, en caso de falsedad cometida en la declaración; sin perjuicio de que el remitente, o en su defecto, el consignatario, sean obligados a pagar la diferencia de portes y los daños y perjuicios; reservándose la propia Compañía las demás acciones a que tenga derecho.

5.—Los fletes y gastos por carga sujeta a transportación, podrá rectificarlos en todo tiempo la Compañía y el remitente o el consignatario sólo podrán hacerlo en el acto del recibo de la carga en su destino.

6.—El remitente podrá variar el punto de destino de la mercancía interin ésta no haya llegado a su destino, así como la persona del consignatario mientras que aquélla no se haya puesto a disposición de éste; pero en ambos casos será condición precisa la de que al pedir estos cambios se devuelva el conocimiento, haciendo constar en el mismo, el remitente, con su firma, que queda anulado este documento y no de otra manera. En este caso, el remitente tendrá la obligación de pagar los gastos que por esta operación se ocasionen a la Compañía.

7.—Una vez puesta la mercancía por esta Empresa a disposición del consignatario, el remitente no tendrá ya derecho alguno sobre la propia mercancía, la cual pertenece al consignatario.

8.—Los bultos que contengan las mercancías deberán llevar el nombre y dirección del consignatario y serán sellados cuando así lo exija la Compañía. Si intervinieren Agentes Aduanales extraños al servicio de la Compañía, señalados por el remitente para el manejo de la carga en las Aduanas o Agencias Fiscales, los bultos que contengan las mercancías deberán sellarse por dichos Agentes y la falta de esto eximirá a la Compañía de toda responsabilidad en la pérdida o menoscabo de la mercancía. Efectuada la descarga en el lugar de su destino, las mercancías quedarán a riesgo de su dueño.

9.—El consignatario inquirirá el arribo de la carga en el lugar de su destino; teniendo la obligación de retirarla dentro de 48 horas y dentro de 24 si los efectos son susceptibles de perderse o averiarse. En este último caso, pasado dicho plazo de 24 horas sin haberse retirado, serán vendidos desde luego, de conformidad con lo dispuesto por el Artículo 164 del Reglamento General de Ferrocarriles.

10.—La Empresa no será responsable de la pérdida, robo, destrucción o avería, total o parcial que sufran las mercancías sujetas a transportación en los trenes o estaciones, ya procedan de caso fortuito o fuerza mayor, o ya de actos de fuerza armada o de personas que no estén al servicio de la Compañía. Igualmente no será responsable por la pérdida, desfalco o avería de las mercancías en todo o en parte, por defecto o vicio propios de las mismas, no por roturas o mermas; así como tampoco de las averías o extravíos de las mercancías cargadas por los remitentes en carros puestos a su disposición cuidados por los mismos; entendiéndose que en este último caso y aún cuando no haya sido cuidada, para presentar cualquiera reclamación, tendrá que probar que la avería o extravío tuvo lugar en el tránsito y que es imputable a la Compañía.

11.—En caso de extravío de bultos de equipaje entregados como mercancías, para que se conduzcan en trenes de carga y siempre que estén anotados en este documento, la Compañía, en caso de responsabilidad, se obliga a pagar como indemnización hasta $50.00 por baúles o petacas grandes y hasta $15.00 por cualquier otro bulto.

12.—En caso de pérdida, desfalco o avería, en todo o en parte, que sufran las mercancías entregadas a la Compañía para su transportación, ya procedan de incendio, robo o por cualquier otra causa que pudiera imputarse a la misma Compañía, la responsabilidad de ésta quedará extinguida cuando se trate de pérdida total, abonando al reclamante el costo original de la mercancía y la devolución del flete pagado y en caso de desfalco o avería, se abonará solamente el importe del menosprecio o demérito de la mercancía, en atención a su costo original y la porción del flete que corresponda. A este fin, la persona que haga su reclamación deberá presentarla dentro del término de 30 días contados de la fecha en que haya tenido lugar la pérdida, desfalco o avería; acompañando el conocimiento con la anotación de pérdida o daño, puesta por el Agente de Estación del lugar de su destino y de los demás justificantes que acrediten la responsabilidad de la Compañía. Pasado ese término no se aceptará ninguna reclamación y al efecto, el remitente o la persona que haga sus veces, renuncia a favor de la Compañía el término que señala la fracción II del artículo 592 y III de 1043 del Código de Comercio.

13.—Los fletes y gastos sobre toda carga consignada a Estaciones que no tengan Agente, se pagarán adelantados y los efectos se entregarán solamente a su dueño o a su Agente autorizado, previa entrega del conocimiento debidamente fechado y con el acuse de recibo. En caso de que no se encuentre el dueño en la estación listo para recibir la carga, será llevada a la estación siguiente en donde haya Agente y se entregará allí previo pago del correspondiente cargo adicional.

14.—Si la mercancía no se retirase de los almacenes de la Empresa, dentro de las 48 horas siguientes a su arribo, causará el pago de almacenaje y si durase en ellos el término de 90 días y dentro de dicho término nadie la reclama en debida forma, podrá la Compañía ponerla a disposición judicial para su venta, a fin de reembolsarse del flete y demás gastos para su conducción.

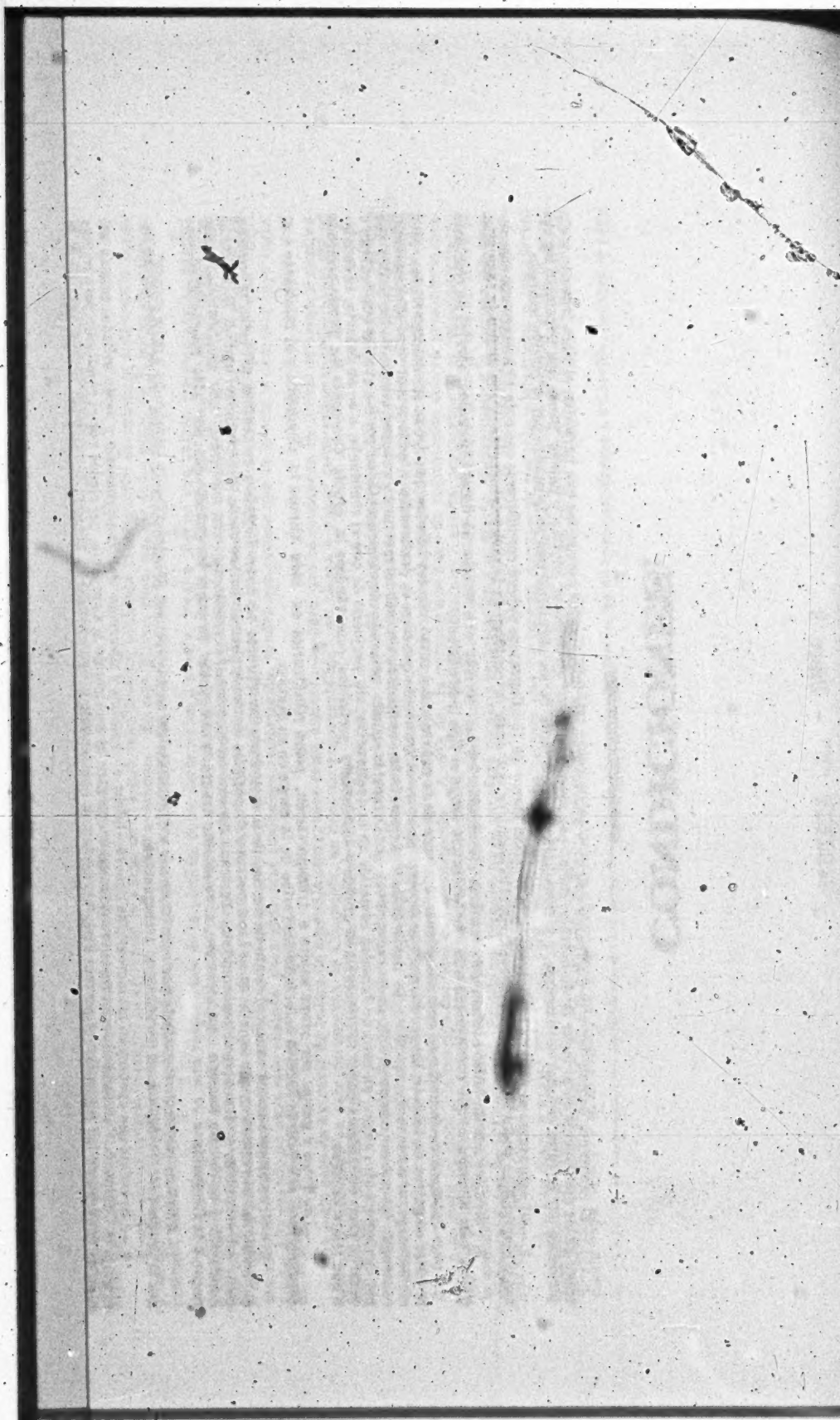
15.—En caso de que este conocimiento ampare mercancías consignadas a algún punto que no comprendan las líneas de esta Compañía, la responsabilidad de ésta cesa en el momento que las entrega al portador que haya de continuar el transporte y a este efecto el remitente está conforme en entenderse con el nuevo portador y renuncia los beneficios que le concede el artículo 577 del Código de Comercio.

16.—Cuando la carga deba de venderse, como lo expresan los puntos 9 y 14 y el producto de su venta no alcance a cubrir el importe de fletes y gastos que adeudare, o bien cuando la Compañía tuviere que hacer reclamaciones por el pago de fletes y gastos o por rectificación de los mismos que hubieren pagado, tendrá derecho a exijir las cantidades pendientes de pago, bien del porteador de quien haya recibido la carga, bien del primer remitente, o bien del consignatario, a su elección.

17.—Para la mayor firmeza y validez de las condiciones que en este documento se expresan, el remitente declara que expresamente renuncia el derecho que le conceden las fracciones IV, VI, VIII y X del artículo 590 del Código de Comercio.

18.—Cuando la carga se sitúe por el consignador en carro puesto a su disposición, la Compañía cobrará doble tipo de flete por la carga que exceda de diez por ciento (10%) de la capacidad marcada en el carro.

26-b



[fol. 42] EXHIBIT F TO ANSWER

Southern Pacific Railroad of Mexico, West Coast Route

Export Bill of Lading

Number of the Shipper: ——. No. of the Agent ——.

Stamp of the Station, Navojoa, Nov. 24, -923.

Received the 24th day of November, 1923, subject to the classification and tariffs in force on the date of the issuing of this bill of lading. At the Station Navojoa Son from Commercial Agency of Mayo The freight which is described immediately following in apparent good order with the notations thereon, ignoring the condition of the contents in the packages; marked consigned and destined according to how it is indicated hereinafter and which this enterprise agrees to transport to the point of destination, providing this said point is situated on the line, otherwise it will be delivered to another participating carrier to be transported to said point of destination. It is hereby mutually agreed that all transportation service shall be subject to the laws and railway regulations and to all of the conditions contained in the present document.

Consigned to Lewis Simas Jones Company. (Gibraltar Warehouse)

Destination San Francisco State of California USA

Initial and number of the car SP 84996.

Via S. P. Co. to destination.

[fol. 43]

No. & marks separately	No. of packages	Nature of packages	Description of the freight (shipment)	Class	Weights, subject to correction
L. S. J.	840	Sacks	Cow Peas (Frijol ojo Negro) with 50.5 Kilos Gross weight each one.	....	42420 kilograms

S L & C Freight to Collect c/o Manuel F. Gonzalez, Nogales Son

Class	Rate, kilograms per 1000 kilograms	Amount or sum	Freight and expenses
D-1	Car requested of 80,000 lbs..	.....	The amount or value of the freight and expenses shall be paid in advance within the discretion of the Company and this shall be invariably when the merchandise
1½-1	Car furnished		
1	of 100,000 lbs. by the S. P.		

S L & C. Freight for Collection. c/o Manuel F. Gonzalez, Nogales, Son.

Class	Rate, kilograms per 1000 kilograms	Amount or sum	Freight and expenses
	of M.....	.....	or goods subject to transportation
2	.....	.....	are of little value or susceptible
3	.....	.....	to decomposition in all or in part
4	.....	.....	and equally so when the freight
5	.....	.....	is destined to stations where there
6	.....	.....	is no agent.
7	.....	.....	In the freight accounts will not
8	.....	.....	be included custom house nor
9	.....	.....	commission charges at the fron-
10	.....	.....	tier and ports of departure, nor
11	.....	.....	what the merchandise would hap-
12	.....	.....	pen to occasion in its transit or
(Special)	.....	.....	on its arrival at the place of desti-
			nation.
			The amount of values of the
			freights, as well as the expenses
			that the company may happen to
			incur should be covered previous
			[fol. 44] to the delivery of the freight
			to the consignee and shall be sub-
			ject to rectification.

Station of: ——. Date: —— —, ——. ——————

Total amount of freight: ——.

Expenses advanced for account of ——.

Loading and Unloading: ——.

Revenue Stamps: ——.

Total to collect or paid? ——.

Received the freight herein described in apparent good order or in the condition herein noted for the consignee or owner of the freight.

—— ——, (Consignee).

This freight (or shipment) when submitted to exportation shall be subject to all of the conditions shown on bills of lading of participating carriers and the conditions appearing on this bill of lading are without effect, when differing from those shown on other carriers' bills of lading relative to acts on the part of said carriers.

Commercial Agency of Mayo (Consignor), by J. A. Morales. H. Navarro (Station Agent).

This document does not carry thereon the corresponding revenue stamps, as the amount thereof has been fully satisfied by virtue of the contract entered into concerning same with the Secretary of the Treasurer or Finance.

Conditions

1. The shipper shall deliver to the Company with due diligence the necessary documents that will permit the free transit and delivery of the merchandise at the place of its destination; the seizure or confiscation, fines and other penalties that may be imposed by the authorities for the lack of such documents being charged to his account and he shall indemnify the Company for the damages that may [fol. 45] be caused to the same for the reason indicated.

2. In expressing the weight of the merchandise, the fraction less than 10 kilograms shall be considered as that of ten kilograms complete and no freight can be less than 50 centavos (Translator's note: 50 centavos is equivalent to 25 cents American money) whatever may be the quantity of the merchandise transported and the distance covered.

3. Whenever a package contains classified goods in the tariffs with different freight rates, it shall serve as a type to fix to all of the load that which corresponds to the merchandise that has or bears the highest rate.

4. The statement made in this bill of lading concerning the nature and condition of the effects which should be transported will be the only one which shall serve as a basis in the questions which may arise between the shipper who makes the statement or declaration and the Enterprise; the latter reserving, however, the right of correcting the declaration of the shipper exacting from him the opening and examination of the packages that contain the merchandise in the act of its reception or receipt. The Company remains relieved of responsibility for the damages that may occur or for any other cause, in case of falsehood committed [fol. 46] in the declaration; without prejudice that the shipper or in his absence, the consignee shall be obliged to pay the difference in freight rates and the damages and prejudice the Company itself reserving its right to all the other actions or suits.

5. The freight rates and the expenses for freight subject to transportation can be rectified at any time by the company and the shipper or the consignee can only do so upon the act of the receipt of the freight at destination.

6. The shipper can change the point of destination of the merchandise while the same has not arrived at its destination as likewise the person of the consignee while it has not been placed at the disposition of the latter; but in either case it will be a precise condition that upon the request of these changes, the bill of lading be returned, the shipper causing to be inscribed therein with his signature that this document remains nullified and not in any other manner. In this case the shipper shall be obliged to pay the expenses that because of this operation are incurred by the Company.

7. Once the merchandise has been placed by this Enterprise at the disposition of the consignee, the shipper will [fol. 47] then have no right whatever upon the merchandise itself, which belongs to the consignee.

8. The packages that contain the merchandise shall bear thereon the name and address of the consignee and they shall be sealed when thus exacted by the Company. If custom house agents foreign to the service of the Company should intervene, designated by the shipper for the handling of the freight at the custom houses or fiscal agencies, the bundles that contain the merchandise shall be sealed by said agents and the lack of this shall exempt the Company from all responsibility in the loss or deterioration of the merchandise. The unloading of same having been effected at the place of its destination, the goods shall remain at the risk of the owner.

9. The consignee shall inquire as to the arrival of the freight at the place of its destination, having the obligation of removing same within 48 hours and within 24 hours if the effects are susceptible of perishing or damage. In this latter case the period of 24 hours having elapsed without being removed, they shall be sold at once, in conformity with the proviso of Article 164 of the General Railway By-Laws. (Trans. note: Railway Rules and Regulations.)

10. The Enterprise will not be responsible for the loss, theft, destruction or damage, total or partial, suffered by [fol. 48] the merchandise subject to transportation on the trains or stations, whether through the same shall proceed or emanate through a fortuitous case or superior force, or through acts of an armed force or of persons who may not be at the service of the Company, equally so it will not be

responsible for the loss, defalcation or damage of the merchandise in all or in part, through defect or vices belonging properly to the same, nor for breakage or shrinkage and likewise neither for the damages or deviations of the merchandise loaded by the shippers in cars placed at their disposition cared for by the same; it being understood that in this latter case and even when it has not been cared for in order to present any claim, he will have to prove that the damage or deviation (going astray) took place in transit and that it is chargeable or imputable to the Company.

11. In case of the going astray of baggage packages delivered as merchandise in order to be conducted on freight trains and providing that these packages are noted in this document, the Company, in case of responsibility, obligates itself to pay as indemnification up to $50.00 (Mexican ½ U S money) for trunks or large grips and up to $15 (Mexican) for any other bundles.

[fol. 49] 12. In case of loss, defalcation or damage in all or in part suffered by the merchandise delivered to the Company for its transportation, whether same be due to fire, theft or for any other cause that could be imputed to the same Company the responsibility of the latter shall be extinguished when a total loss is involved and crediting to the claimant the original cost of the goods and the return of the freight paid and in case of defalcation or damage, there shall be credited only the amount of the diminution or depreciation of the merchandise determined by its original cost and that portion of the freight rate that may correspond to it. For this purpose the person who makes these claims should present it within the period of 30 days counted from the time or date in which the loss took place, defalcation or damage; accompanying the bill of lading with the notation of loss or damage, placed thereon by the agent of the station (station agent) of the place of its destination and of the other justifications that accredit the responsibility of the Company. After the lapse of this time, no claim shall be accepted and in effect, the shipper or the person that takes such steps renounces in favor of the Company the term of time that fraction II of Article 592 and III of 1043 of the Commercial Code designates.

[fol. 50] 13. The freight rates and expenses upon all freight consigned to stations that have no agents, shall be paid in advance and the effects or goods shall be delivered only to their owner or to the authorized Agent, upon the previous delivery of the bill of lading duly dated and with acknowledgment of receipt thereon. In case that the owner is not found at the Station ready to receive the freight, it shall be taken to the following station where there is an agent and if shall be delivered there upon the previous payment of a corresponding additional charge.

14. If the merchandise is not withdrawn from the warehouses of the Enterprise within the 48 hours following its arrival, it will occasion the payment of storage and if it should remain in them for a period of 90 days and if within that time no one claims the same in due form, the Company can place the same at judicial disposition for its sale to the end or for the purpose of reimbursing itself the freight and other expenses incidental to its conduction.

15. In case that this bill of lading pertains to merchandise consigned to some point not within the lines of this Company, the responsibility of this Company ceases at the moment that same are delivered to the participating carrier who shall have to continue the transportation and [fol. 51] for this purpose or effect the shipper hereby agrees to come to an understanding with the new participating carrier and renounces or waives the benefits conceded to him by Article 577 of the Commercial Code.

16. When the freight should be sold as expressed or provided by clauses 9 and 14 and the product of its sale does not reach the figure high enough to cover the amount of the freight and other charges that may be due the same, or on the other hand when the Company should have to demand or cause to make demands for the payment of freight rates and expenses or for the rectification of the same that they may have paid, it shall have the right to demand the outstanding accounts of payment, either from the participating carrier from whom he may have received the freight either from the first shipper or either from the consignee, at its election.

17. For the greater firmness and validity of the conditions that are expressed in this document, the shipper de-

clares that he expressly waives the right conceded to him by fractions IV, VI, VIII, and X of Article 590 of the Commercial Code.

18. When the freight is loaded by the consignor in a car placed at his disposal, the company shall collect double [fol. 52] the rate of freight for the load that exceeds (10%) ten per cent of the capacity marked on the car.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Jose H. Alfonso, being first duly sworn, deposes and says: That he is a citizen of the United States and over the age of twenty-one years; that he is by profession an interpreter and translator of the Spanish language into English and the English language into Spanish, with an office at Suite 316 No. 948 Market Street, Liberty Bank Building, in the aforesaid city and county and State;

That the translation of the bill of lading annexed hereto in Spanish, is a true and correct translation of said Spanish bill of lading of the Southern Pacific Railroad of Mexico, a true and correct translation of same into the English language and fully expresses the true and correct value thereof.

Jose H. Alfonso.

Subscribed and sworn to before me this 24th day of November, A. D. 1926. Lester Ball, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[fol. 53] (Endorsed:) Service of the within answer is admitted this 3rd day of January, 1927. E. W. Hollingsworth, Attorney for Plaintiff.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

DEMURRER TO ANSWER—Filed Jan. 10, 1927

Now comes the above named plaintiff and demurs to the answer of the defendant on file herein and to each and every

alleged defense in said answer upon the following grounds, to wit:

I

That the said answer does not state facts sufficient to constitute a defense to the complaint herein.

II

That the first alleged defense commencing at line 12 on page 1 and ending at line 1 on page 5 of the said answer does not state facts sufficient to constitute a defense.

III

That the second alleged defense commencing at line 5 [fol. 54] and ending at line 13 on page 5 of the said answer does not state facts sufficient to constitute a defense.

E. W. Hollingsworth, Attorney for Plaintiff.

(Endorsed:) Receipt of copy of the within demurrer admitted this 7th day of January, 1927. A. L. Whittle, F. W. Mielke, James E. Lyons, Attorneys for Defendant.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER ON DEMURRER TO COMPLAINT, ETC.

Thursday, September 1, 1927.

Present: Honorable Timothy I. Fitpatrick, judge, and officers of the court.

In this action:

1. Demurrer to the complaint;

2. Demurrer to answer;

3. Motion to strike parts of answer; and

4. Cause having been heretofore submitted to the court, and the court having duly considered the same and now [fol. 55] being fully advised in the premises; *and* it is ordered that

1. Demurrer to complaint be overruled;

2. Demurrer to answer, sustained;

3. Motion to strike parts of answer granted; and

4. Cause, ordered judgment in favor of plaintiff as prayed.

[Entered in minutes of department No. 8, volume 236, page 174.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER ON MOTIONS

Saturday, February 11, 1928.

Present: Honorable Louis H. Ward, judge, and other officers of the court.

In this action, it is by the court ordered that the heretofore submitted motion for counsel fees at $400 on account, be and is hereby granted.

Motion for leave to file amended answer be granted.

Motion to vacate minute order of September 1, 1927, granted.

[Entered in minutes of department No. 16, volume 245, page 158.]

[fol. 56] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

AMENDMENT TO ANSWER—Filed Feb. 15, 1928

Comes now the above named defendant and, having first obtained leave of court, hereby amends its answer on file in the above entitled action by striking out all of paragraph V, page 4 thereof, and substituting therefor the following:

V

Defendant avers that, at all times mentioned in said complaint, the line of railroad, over which the shipments involved herein moved from Navojoa to San Francisco, crossed the

international boundary between the Republic of Mexico and the United States at Nogales, Arizona, which said point is located on said line and route; and that, at all times mentioned in said complaint, defendant Southern Pacific Company maintained a rate applicable on cow peas, carloads, from the said international boundary line at Nogales, Arizona, to San Francisco, California, which rate would have been applicable for the transportation within the United States of the shipments mentioned in the complaint had the consignors or owners elected to consign the same to said international boundary line and had thence reshipped said cow peas from said international boundary line to San Francisco; and that the Interstate Commerce Commission [fol. 57] has not at any time found said local rate from the international boundary at Nogales, Arizona, to San Francisco, California, to be or to have been unjust or unreasonable, or otherwise in violation of law.

Defendant avers that the order of the Interstate Commerce Commission, mentioned in paragraph V of said complaint, is arbitrary, unjust, unreasonable and contrary to law, in that it purports to require, and if enforced by judgment of this court, will require the defendant to refund to the plaintiff the difference between the lawful joint through rate charged, to wit, $1.33 per 100 pounds, and the amount of 94 cents per 100 pounds subsequently found by the Interstate Commerce Commission in its report herein to have been reasonable as a joint through rate on cow peas from Navojoa, Sonora, Mexico, to San Francisco; that said finding was made without any allegation, proof or finding that the said rate on cow peas, carloads, from the international boundary line between the Republic of Mexico and the United States, on defendant's line of railroad, to San Francisco is unjust or unreasonable or otherwise unlawful.

Defendant further avers that by reason thereof, the order of the Interstate Commerce Commission is nugatory and void for want of jurisdiction of the subject matter by said [fol. 58] Commission; and that if enforced by judgment of this court, will take the property of this defendant without due process of law, in violation of Section 13 of Article I of the Constitution of the State of California, and the 5th and 14th Amendments to the Constitution of the United States.

Wherefore defendants pray that plaintiff take nothing by its complaint herein, but that the same be dismissed with costs to defendant.

F. W. Mielke, Albert L. Whittle, James E. Lyons, Attorneys for Defendant.

Duly sworn to by J. L. Fielding. Jurat omitted in printing.

[fol. 59] (Endorsed:) Service of the within amendment to answer is admitted this — day of February, 1928. E. W. Hollingsworth, Attorney for Plaintiff.

[File endorsement omitted.]

In Superior Court of City and County of San Francisco

Demurrer to Answer as Amended—Filed Feb. 15, 1928

Now comes the above named plaintiff and demurs to the answer of the defendant on file herein, as amended, and to each and every alleged defense in said answer in said amendment upon the following grounds, to wit:

I

That the said answer does not state facts sufficient to constitute a defense to the complaint herein.

[fol. 60]

II

That the first alleged defense, commencing at line 12, on page 1 and ending at line 1 on page 5 of the said answer, as amended, does not state facts sufficient to constitute a defense.

III

The second alleged defense, commencing at line 5 and ending at line 13 on page 5 of the said answer does not state facts sufficient to constitute a defense.

E. W. Hollingsworth, Attorney for Plaintiff.

I hereby certify that I am the attorney for the plaintiff in the above entitled action and that I have read the fore-

going demurrer and know the contents thereof; that in my opinion the same is well taken in point of law and is not interposed for the purpose of delay.

E. W. Hollingsworth.

(Endorsed:) Receipt of copy of the within demurrer admitted this 15th day of February, 1928. F. W. Mielke, Albert E. Lyons, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 61] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

ORDER OVERRULING DEMURRER TO ANSWER AS AMENDED AND DENYING MOTION TO STRIKE OUT

Monday, March 12, 1928.

Present: Honorable Louis H. Ward, judge, and other officers of the court.

In this action it is ordered by the court that the motion to set aside order be denied and the demurrer be overruled and notice was waived.

[Entered in minutes of department No. 16, volume 245, page 272.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Aug. 30, 1929

This cause came on regularly for trial on the 26th day of October, 1928, before the above entitled court, Honorable John J. Van Nostrand, judge, presiding, and was tried by the court without a jury, a jury trial having been duly waived by the parties, and oral and documentary evidence having been received, and the cause thereafter duly submitted upon briefs filed by the parties, the court, from the evidence introduced, now finds the facts as follows, to-wit:

[fol. 62] Findings of Fact

1. That plaintiff is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

2. That defendant is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of laws of the State of Kentucky, and was and is engaged as a common carrier in the transportation of property for hire in interstate commerce, having a line of railroad extending from Nogales, Arizona, to San Francisco, California.

3. That Southern Pacific Railroad Company of Mexico is, and at all times herein mentioned has been, a corporation organized and existing under laws of the State of New Jersey, engaged as a common carrier in the operation of lines of railroad in the Republic of Mexico, having a line of railroad extending from Navojoa, State of Sonora, Republic of Mexico, to the international boundary line between the United States and the Republic of Mexico, at or adjacent to Nogales, Arizona; that at all said times said line of railroad connected, at a point upon said international boundary line at Nogales, Arizona, with the railroad line of defendant Southern Pacific Company.

[fol. 63] 4. (a) That during the month of November, 1923, said Southern Pacific Company of Mexico received at Navajoa, Sonora, Mexico, from A. Von Borstel, Agustin Von Borstel, and Agencia Comercial del Mayo, three (3) carload shipments of "cow peas" which were respectively consigned to plaintiff at San Francisco, California, U. S. A.; and that said Southern Pacific Railroad Company of Mexico thereupon issued its export bills of lading (Conocimiento de Exportacion) therefor, a copy of each of which, together with a true and correct translation thereof from the Spanish into the English language, is annexed to the answer to the complaint on file herein, and marked exhibits "A," "B," "C," "D," "E," and "F," respectively; that each of said export bills of lading acknowledged receipt of said cow peas "subject to the classification and (Mexican) tariffs in force on the date of the issuing" of said bills

of lading, and it was therein mutually agreed between the said respective shippers and the said Southern Pacific Railroad Company of Mexico that "all transportation service shall be subject to the laws and railway regulations and to all the conditions contained in the present document";

(b) That said cow peas were thereupon duly transported [fol. 64] by the Southern Pacific Railroad Company of Mexico from Navajoa, Sonora, Mexico, to the junction of its line of railroad with that of the defendant Southern Pacific Company at the international boundary line at Nogales, Arizona, at which last named point said carload shipments were delivered to and received by defendant Southern Pacific Company under said export bills of lading for further transportation over the latter's line of railroad from Nogales, Arizona, to San Francisco, California; and that said carload shipments were thereafter duly transported by defendant and delivered to and received by plaintiff at San Francisco, California.

5. That the defendant collected from the plaintiff, and the plaintiff paid to the defendant, freight charges for the transportation of said shipments, amounting in the aggregate to the sum of $3828.74.

6. That said freight charges were based upon the aggregate weights of the said shipments, and a joint through rate of $1.33 per 100 pounds maintained by said Southern Pacific Railroad Company of Mexico and defendant, said joint through rate having theretofore been published and filed with the Department of Communications and Public Works of the Republic of Mexico and with the Interstate Commerce Commission.

[fol. 65] 7. That subsequent to the transportation and delivery of said shipments, and on or about July 31, 1924, plaintiff filed a complaint with the Interstate Commerce Commission against defendant, alleging that the aforesaid rate charged for the transportation of said shipments from Navojoa, Sonora, Mexico, to San Francisco, California, was unreasonable and in violation of the Interstate Commerce Act, and praying said Commission to award damages for said asserted violation of the Interstate Commerce Act; that said complaint was thereafter duly considered by

the Interstate Commerce Commission, upon evidence submitted by the parties; that thereafter, and on September 18, 1925, said Commission rendered its report and made its order authorizing and directing said defendant to pay unto complainant the sum of $1122.72, with interest thereon at 6 per cent per annum from and after January 1st, 1924, as reparation on account of the assessment and collection of charges upon the basis of the aforesaid joint through rate of $1.33 per 100 pounds; that said report of the Interstate Commerce Commission is embodied in its official printed reports, under the name and style of "Lewis-Simas-Jones Company vs. Southern Pacific Company," and is reported in Volume 102 I. C. C. Reports, at page 245; that defendant [fol. 66] refused to comply with said order of the Interstate Commerce Commission; and thereafter, and on or about the 6th day of August, 1926, plaintiff filed a complaint with the above-entitled court in this cause, praying for the enforcement of the said order of the Commission, and for attorneys' fees and costs.

8. That at all times herein mentioned prior to the eleventh day of December, 1923, and upon all the dates upon which the said shipments of the plaintiff were in course of transportation from Navojoa, Sonora, Mexico, to San Francisco, California, the defendant duly maintained and published in a tariff on file with the Interstate Commerce Commission, a rate of $1.14½ per 100 pounds, applicable on carload shipments of cow peas originating at Nogales, Arizona, and destined to San Francisco, California; that said rate was duly published in Southern Pacific Company Tariff No. 612-E, I. C. C. No. 4381, at page 57; that its application to cow peas was authorized and provided in and by Pacific Freight Tariff Bureau Tariff Exception Sheet No. 1-I, I. C. C. No. 640, published by F. W. Gomph, as Agent for Southern Pacific Company, and other railroad carriers, and duly concurred in by defendant Southern Pacific Company; that said rate of $1.14½ per 100 pounds [fol. 67] was applicable to carload shipments of cow peas originating at the point where the lines of railroad of the Southern Pacific Railroad Company of Mexico and defendant touch the international boundary line between the United States and Mexico, at Nogales, Arizona, and destined

to San Francisco, California, and was likewise applicable upon carload shipments of cow peas loaded into cars at any point upon or adjacent to said international boundary line, within the limits of defendant's railroad yards at Nogales, Arizona, and destined to San Francisco, California.

9. That plaintiff's shipments were contained in sacks; that said shipments could readily have been transported by other means than by railroad to a point at said international boundary line within the limits of defendant's railroad yards at Nogales, Arizona, and there loaded into railroad freight cars for movement over defendant's line; that the rate applicable upon shipments from such point upon the international boundary line at Nogales, Arizona, to San Francisco, at the time plaintiff's aforesaid shipments moved, was said last mentioned rate of $1.14½ per 100 pounds.

10. That the railroad freight yards of the defendant at Nogales, Arizona, include within their limits main line [fol. 68] tracks and sidings which actually touch the physical boundary line between the United States and Mexico; that freight cars may be placed for the loading of freight upon said tracks, at said international boundary line, and there loaded with freight for transportation by rail to destinations within the United States, and particularly to San Francisco, California.

11. That said rate of $1.14½ per 100 pounds last mentioned was at all times reasonable and lawful for application upon carload shipments of cow peas from Nogales, Arizona, including such shipments as might be loaded at any and all places within the railroad yard limits at that point, destined to San Francisco, California; that said rate was not alleged to have been, or to be, unreasonable, in the complaint of the plaintiff filed with the Interstate Commerce Commission, as hereinbefore set forth; that plaintiff introduced no evidence, in said case before the Interstate Commerce Commission, showing or tending to show that said last-mentioned rate was other than a reasonable and lawful rate for application upon shipments of cow peas from Nogales, Arizona, to San Francisco, California, and that said Interstate Commerce Commission made no finding with respect thereto.

[fol. 69] Conclusions of Law

As conclusions of law from the foregoing facts, the court finds and concludes that the Interstate Commerce Commission was without jurisdiction, under the Interstate Commerce Act, to make its order hereinbefore referred to purporting to award reparation to the aforesaid plaintiff, in the sum of $1,122.72, with interest, or in any other sum or sums whatsoever; that said order of the Interstate Commerce Commission was and is null and void, and of no effect; and that defendant is entitled to judgment dismissing the complaint and for its costs of action herein incurred, and that plaintiff take nothing by its action.

Let judgment be entered accordingly.

John J. Van Nostrand, Judge of said Superior Court.

[File endorsement omitted.]

In Superior Court of City and County of San Francisco

Judgment—Filed Aug. 30, 1929

The above entitled cause coming on regularly for trial on the 26th day of October, 1928, E. W. Hollingsworth, Esq., [fol. 70] appearing for plaintiff, and Henley C. Booth and A. Burton Mason, Esqs., appearing for defendant, and the plaintiff having submitted said cause upon the allegations of the complaint and answer as amended, and evidence having been introduced by the defendant, and said cause having been duly submitted for decision upon briefs filed by the respective parties, and the court, being fully advised, having rendered its findings of fact and conclusions of law herein, wherein judgment is ordered in favor of the defendant and against the plaintiff:

Now, therefore, by reason of the law and the findings aforesaid:

It is ordered, adjudged and decreed that the plaintiff take nothing by this action, and that defendant have judgment for its costs of suit therein, taxed at $8.00.

Dated, San Francisco, California, this 30th day of August, 1929.

John J. Van Nostrand, Judge of the Superior Court.

[File endorsement omitted.]

Recorded Aug. 30, 1929, 10:40 o'clock A. M., volume 303, page 210.

H. I. Mulcrevy, Clerk, by Nathan Goldberg, Deputy Clerk.

[fol. 71] Clerk's certificate to Judgment Roll omitted in printing.

[fol. 72] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF INTENTION TO MOVE FOR NEW TRIAL—Filed Sept. 3, 1929

To James E. Lyons, Albert L. Whittle, Henley C. Booth, and A. Burton Mason, attorneys for defendant:

Take notice, that plaintiff, Lewis-Simas-Jones Company, intends to move the court to vacate and set aside the judgment rendered in the above cause, and to grant a new trial of said cause, upon the following grounds, to wit:

I

That the evidence is insufficient to justify the judgment.

II

That the findings of fact are not supported by the evidence.

III

That the findings of fact do not support the judgment.

IV

That the judgment is contrary to law.

V

Errors in law occurring at the trial, and excepted to by the plaintiff.

Said motion will be made upon the minutes of the court in said cause.

[fol. 73] Dated San Francisco, California, September 3, 1929.

E. W. Hollingsworth, Attorney for Plaintiff.

(Endorsed:) Receipt of copy of the within notice of intention to move for new trial admitted this 3rd day of September, 1929. A. L. Whittle, J. E. Lyons, Attorneys for Defendant.

[File endorsement omitted.]

IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL FROM JUDGMENT—Filed Nov. 1, 1929

To James E. Lyons, Albert L. Whittle, Henley C. Booth, and A. Burton Mason, attorneys for defendant, and to the clerk of the above entitled court:

You and each of you will please take notice that the plaintiff in the above entitled action hereby appeals to the District Court of Appeal of the State of California, first appellate district, from the judgment made and entered in [fol. 74] said Superior Court in said action on the 30th day of August, 1929, and from the whole of said judgment.

E. W. Hollingsworth, Attorney for Plaintiff.

(Endorsed:) Receipt of copy of the within notice of appeal admitted this 31st day of October, 1929. James E. Lyons, A. Burton Mason, A. L. Whittle, H. C. Booth, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 75] IN SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct

copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated December 9th, 1929.

James E. Lyons, A. Burton Mason, A. L. Whittle, Henley C. Booth, Attorneys for Respondent. E. W. Hollingsworth, Attorney for Appellant.

[fol. 76] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 77] [File endorsement omitted]

IN DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

Civil. No. 7280

LEWIS-SIMAS-JONES COMPANY, Plaintiff and Appellant,

vs.

SOUTHERN PACIFIC COMPANY, Defendant and Respondent

OPINION AND JUDGMENT—Filed June 16, 1930

Appellant brought an action against respondent under the provisions of section 16 of the Interstate Commerce Act (U. S. Code, Title 49) to enforce an award of the Interstate Commerce Commission. This appeal is taken from a judgment in favor of respondent.

In 1923 respondent delivered to appellant at San Francisco three carloads of cow peas which respondent in conjunction with the Southern Pacific Company of Mexico had transported on through bills of lading and joint through rates from Navojoa, Mexico. The shipments were transported by the Mexican carrier from Navojoa, Mexico to

Nogales, Arizona and by respondent from Nogales, Arizona to San Francisco. Respondent collected the freight charges from appellant at San Francisco. These charges were [fol. 78] based upon a joint through rate maintained by the Southern Pacific Company of Mexico and respondent, which joint through rate was published and filed with the Department of Communications and Public Works of the Republic of Mexico and with the Interstate Commerce Commission. In the proceedings instituted by appellant against respondent before the Interstate Commerce Commission the Commission found that such joint through rate was unreasonable and awarded damages to appellant based upon the excess of the rate charged over the rate determined by the Commission to be a reasonable joint through rate. In the present action to enforce the award the trial court found that at all times during which appellant's shipments were in the course of transportation from Navojoa, Mexico to San Francisco the respondent maintained and published in a tariff on file with the Interstate Commerce Commission a rate applicable on carload shipments of cow peas originating at the international boundary line at Nogales, Arizona and destined to San Francisco; that said rate was at all times reasonable and lawful and that said rate was not alleged to be unreasonable in the complaint filed with the Interstate Commerce Commission; that appellant introduced no evidence before the Commission to show that last mentioned rate was other than reasonable and lawful for application upon shipments of cow peas from Nogales, Arizona to San Francisco; and that the Commission made no finding with respect hereto. Respondent's defense was that the Commission was without jurisdiction to make the award for damages. The trial court so concluded and rendered judgment in favor [fol. 79] of respondent. This appeal is taken upon the judgment roll alone and the jurisdictional question is the sole question presented for determination.

The jurisdictional question here involved does not relate to the power of Congress under the Constitution, but to the jurisdiction conferred upon the Interstate Commerce Commission by the Interstate Commerce Act. The transportation over which the Commission has jurisdiction is defined and limited by section 1 of the Act. Paragraph 2

of said section reads in part: "The provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States." A similar limitation is found in the language of paragraph 1 of that section. It is conceded by appellants that the Commission has no power under the Act to determine the reasonableness of joint through rates for the purpose of fixing future joint rates on transportation originating in foreign countries. It is further conceded that the jurisdiction of the Commission to award damages extends only to cases where a carrier subject to the provisions of the Act has failed to comply with its duty under the Act. It is contended, however, that the Commission had jurisdiction to award damages in the present case under the authority of News Syndicate Co. v. New York Central Railroad Co., 275 U. S. 179. That decision was handed down during the pendency of the [fol. 80] present litigation and is relied upon both by appellant and respondent on this appeal.

In that case the shipment originated at Thorold, Ontario, Canada, destined for New York City. The Commission found that the joint through rate charged was unreasonable and that the plaintiff in error suffered damages in the amount by which the charges were found to be unreasonable and was entitled to reparation from the carrier that engaged in the transportation of these shipments within the United States. No rates were made or published for the transportation of such shipments from the international boundary to New York City and the Commission did not determine what would be a reasonable rate for this transportation. In the District Court the defendants in error demurred to the complaint on the grounds that the complaint failed to state a cause of action and that the Commission's order was void for want of jurisdiction. The demurrer was sustained and judgment of dismissal entered. After hearing in the Circuit Court of Appeals that court certified certain questions to the United States Supreme Court. The first question certified was:

"1. Where a railroad of the United States and a railroad of the Dominion of Canada unite in the publication of a joint through rate from a point within the Dominion of

Canada to a point within the United States, the rate covering transportation both in Canada and in the United States, has the Interstate Commerce Commission of the United States jurisdiction, on complaint of a shipper or consignee made against the United States railroad alone, to determine the reasonableness of such joint through rate?"

[fol. 81] The answer given was, "Question 1 is answered 'Yes, for the ascertainment of damages.'"

In discussing this question the court said:

"The Interstate Commerce Act applied to the lines that carried, and to the transportation of, the paper from the international boundary to New York City. Sec. (1) and (2). It was the duty of defendants in error to establish just and reasonable rates for that service. Sec. 1 (5), sec. 6 (1) and (7). They failed to make or publish any rate applicable to that part of the transportation. Section 8 makes them liable for damages sustained in consequence of such failure. Had the through rate been just and reasonable, no damages would have resulted to plaintiff in error. Its right to reparation does not depend upon the amounts retained by defendants in error pursuant to agreed divisions. Louisville & Nashville R. R. v. Sloss-Sheffield Co., 269 U. S. 217, 231. Their breach of the statutory duty was a proximate cause of the losses complained of. The failure to establish rates covering the transportation from the international boundary contravened the provisions of the Act and compelled plaintiff in error to pay the through charges complained of. The Commission had jurisdiction to determine whether plaintiff in error was entitled to an 'award of damages under the provisions of this Act for a violation thereof'. Sec. 16 (1). And it was the duty of the Commission to ascertain the damages, the Commission had jurisdiction to determine the [fol. 82] reasonableness of the charges exacted."

The second question certified was:

"2. Where a shipper or consignee of freight shipped to it at a destination in the United States from such point in the Dominion of Canada had paid at destination to the United States railroad the full published joint through freight rate

thereon, has the Interstate Commerce Commission, upon a finding by it that such joint through rate was unreasonble and unjust, but in the absence of a finding that the charges for the transportation is so far as it took place within the United States were unjust and unreasonable, jurisdiction to make an order for the payment of damages to such shipper or consignee in the amount that the entire transportation charges on the basis of the joint through freight rate exceeded the charges which would have been assessed on the basis of the joint through freight rate found by the Commission to have been reasonable?"

The answer given was:

"Question 2 is answered 'yes'." In discussing this question the court in part said, "By their failure to comply with the Act plaintiff in error was compelled to pay charges based on the through rates. On the facts stated, the Commission was authorized to hear the complaint, sec. 13 (1), and had jurisdiction to make the order."

It is apparent that the United States Supreme Court in answering these questions very clearly pointed out that the violation of the Act consisted of the failure to establish rates covering the transportation from the international boundary to New York City. In answering the first question regarding the jurisdiction to determine the rea- [fol. 83] sonableness of the joint through rate, the court qualified its affirmative answer by the words "for the ascertainment of damages". The answer to the second question was in the affirmative but the Commission's authority was decided "on the facts stated". The act was there violated by the carrier's failure to make or publish any rate whatsoever applicable to that part of the transportation between the international boundary and New York City and this violation of the Act compelled the plaintiff to pay the unreasonable joint through rates complained of. In determining the damage proximately caused to the plaintiff in error by this violation of the Act, it was necessary for the Commission to determine the reasonableness of the joint through charges.

In the present case respondent maintained and published a rate as required by the Act on shipments from the international boundary at Nogales, Arizona, to San

Francisco which rate was not found to be unreasonable by the Commission. The appellant was not compelled to pay the joint through rate by reason of any violation of the Act on the part of respondent. The jurisdiction of the Commission to award damages must be predicated upon a violation of the Act and where there is no evidence to show that there has been such violation, the Commission is without jurisdiction to make an award of damages.

The question relating to the judgment awarding to respondent its costs has now become moot as respondent has filed in the trial court a satisfaction of the judgment for costs and a certified copy thereof has been filed with [fol. 84] this court.

The judgment is affirmed.

Spence, J.

We concur: Sturtevant, J.; Nourse, P. J.

[fol. 85] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA. IN BANK

S. F. No. 14014. No. 7280

LEWIS-SIMAS-JONES COMPANY

vs.

SOUTHERN PACIFIC COMPANY

ORDER DENYING PETITION FOR HEARING—Filed in District Court of Appeal, Aug. 14, 1930

By the COURT:

The Appellant's petition to have the above entitled cause heard and determined by this Court after judgment in the District Court of Appeal of the First Appellate District, Division Two, is denied.

Dated this 14th day of August, 1930.

Waste, Chief Justice.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 86] [File endorsement omitted]

IN DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

Civil. No. 7280

LEWIS-SIMAS-JONES COMPANY, Plaintiff and Appellant,

vs.

SOUTHERN PACIFIC COMPANY, Defendant and Respondent

ORDER DENYING REHEARING—Filed July 15, 1930

By the COURT:

The Petition for a Rehearing filed in the above entitled cause is hereby denied.

Dated this 15th day of July, 1930.

Nourse, Presiding Justice.

[fol. 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 1, 1930

The petition herein for a writ of certiorari to the District Court of Appeal, First Appellate District, State of California, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,442. California District Court of Appeal, First Appellate District. Term No. 520. Lewis-Simas-Jones Company, petitioner, vs. Southern Pacific Company. Petition for a writ of certiorari and exhibit thereto. Filed October 21, 1930. File No. 35,442.